

1 - Mr. R. E. Gebhardt  
1 - Mr. W. Wannall  
1 - Mr. J. Hagy

Special Prosecution Force  
U. S. Department of Justice

January 9, 1974

BY COURIER SERVICE

Director, FBI

DANIEL ELLSBERG  
(BURGLARY OF OFFICE OF DR. LEWIS J. FIELDING)

Reference is made to your memorandum dated December 10, 1973, requesting identification of subscribers to several telephone numbers as of mid-1971.

Enclosed are two copies each of the following items, which contain desired subscriber data:

Memorandum dated December 20, 1973, at Boston, Massachusetts, captioned "Daniel Ellsberg."

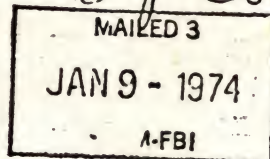
Memorandum dated December 26, 1973, at Baltimore, Maryland, captioned "Re: Daniel Ellsberg (Burglary of Office of Dr. Lewis J. Fielding)."

Memorandum dated December 26, 1973, at Miami, Florida, captioned "Re: Daniel Ellsberg, Burglary of Dr. Lewis J. Fielding's Office."

65-74060

Enclosures - 6

JRH:vb  
(6)



NOTE:

By memorandum dated 12/10/73, Special Prosecution Force (SPF) requested identification of subscribers of record as of mid-1971 to eight telephones located in three FBI field divisions. Enclosures furnish desired data.

Assoc. Dir. \_\_\_\_\_  
Asst. Dir. \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
Ext. Affairs \_\_\_\_\_  
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Spec. Inv. \_\_\_\_\_  
Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_

EX-109

45 65-74060-4678

22 JAN 31 1974

INTELLIGENCE DIV.

64 FEB 6 1974 ROOM [ ] TELETYPE UNIT [ ]

J R [ ] 702 J

86



FBI

Date: 12/13/73

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Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

Transmit the following in \_\_\_\_\_

(Type in plaintext or code)

Via AIRTEL \_\_\_\_\_

(Priority)

TO: DIRECTOR, FBI (65-74060)

ATTN: INTELLIGENCE  
DIVISION

FROM: SAC, WFO (65-11613) (P)

MC LEK

Re WFO airtels to the Bureau 5/25/73, and 6/27/73, with inventories of papers obtained by WFO from the Department of Transportation (DOT), and which had been in the possession of EGIL KROGH.

As the Bureau is aware, KROGH entered a plea of guilty to a charge of violating the civil rights of Doctor LEWIS J. FIELDING and local charges against him in connection with the burglary of Doctor FIELDING's office have been dismissed in Los Angeles. He is still under indictment for making false statements to a Federal Grand Jury in Washington, D. C.

WFO is of the opinion that no useful purpose is being served in continued retention of the KROGH papers by this office and that a proper disposition should be made of them as soon as feasible. WFO notes that inventories of the papers have been furnished to the Special Prosecutor's Office (SPO), and Xerox copies of a selected number of the papers were also furnished to the Bureau for transmittal to the SPO, further that the Bureau has a set of all the papers.

In connection with any consideration of a disposition of the papers, KROGH's attorney requested return of purely personal items and specifically a folder labeled "RN Meeting - July 24, 1971 (Saturday)", which contains 3

2- Bureau

1- WFO

CAR:dah

(3)

22 JAN 31 1974

Approved: \_\_\_\_\_

Special Agent in Charge

Sent \_\_\_\_\_

M

Per \_\_\_\_\_

U.S. Government Printing Office: 1972 - 455-574



pages of handwritten notes. The General Counsel, DOT, expressed a desire that any DOT documents found among the papers be returned to that agency.

The Bureau may wish to refer this matter to the Department for a decision which would safeguard legitimate interest of the Department, SPO, DOT, and KROGH in the papers' final disposition. WFO is of the opinion that except for purely personal items which should be returned to KROGH the papers related principally to KROGH's employment in The Office Of The President and they should be returned to the Custodian of Documents in the White House.

## Memorandum

TO : Mr. W. R. Wannall *4- vrbw*

FROM : Mr. F. S. Putman, Jr. *ESP/SSM 4*

SUBJECT: McLEK (DANIEL ELLSBERG, et al)

1 - Mr. J. W. Marshall  
1 - Mr. W. R. Wannall

DATE: 2/4/74

1 - Mr. F. S. Putman, Jr.  
1 - Mr. W. W. Hamilton

Assoc. Dir. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
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Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

Purpose is to recommend that files in captioned matter be returned to the Files and Communications Division for retention in that division.

Memorandum dated 7/7/71 from W. R. Wannall to C. D. Brennan obtained authority for maintenance of files regarding captioned investigation in the Intelligence Division separate from the general files in the Files and Communications Division.

Because of the reduction in volume of correspondence in this matter further retention of these files in the Intelligence Division does not appear warranted.

RECOMMENDATION:

That all volumes of the McLeK case be returned to the Files and Communication Division to be maintained by that division.

WWH:ljm *ljm*

(5)

*WHA*

*65-74060*  
*Keep in general*  
*files area per*  
*call to Mr.*

*Hamilton 2/7/74.*

*43*

*agp/HB*

REC-102

14 FEB 8 1974

FEB 8 1974

53 FEB 12 1974

UNRECORDED COPY FILED IN 65-74060-1682



Airtel

1 - Mr. W. R. Wannall  
1 - Mr. J. R. Hagy

SAC WFO (65-11613)

1/2/74

Director, FBI (65-74060) - 4677

MC EEF109  
REC-45

Re WFO airtel 12/13/73 recommending Bureau contact the Department for a decision as to the disposition of Egil Krogh's papers, which are now in the custody of WFO.

Bureau is in concurrence with this recommendation and the Department will be contacted relative to this matter.

JRH:ceb

(5) *ceb*

NOTE:

On 5/9/73, Egil Krogh, resigned as Undersecretary of the Department of Transportation (DOT). Krogh formerly was a top White House aide and has been identified as a co-director of the "plumbers" group which was responsible for the burglary of the office of Daniel Ellsberg's psychiatrist. On 5/10/73, Department requested FBI examine papers in Krogh's DOT safe, after learning Krogh still had in his possession many of his White House documents. WFO thereafter retrieved these papers and has them in safe keeping. Examination of the papers by Departmental attorney John Martin revealed nothing of value to the Ellsberg case and a review of their contents by [redacted] Intelligence Division, revealed no data of interest with respect to the "plumbers" matter or related cases. Krogh recently pled guilty to violating the civil rights of Ellsberg's psychiatrist and WFO believes no useful purpose will be served in continued retention of these papers and that they should be properly disposed of.

MAILED 20

JAN 2 1974

FBI

*nm*  
Sec. Dir. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
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Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

*Hagy*

*FS P/JTS*

*WFO*

84 FEB 6 1974

TELETYPE UNIT ☐



## Memorandum

TO : DIRECTOR, FBI (65-74060)

DATE: 2/20/74

FROM : SAC, LOS ANGELES (105-27952)(C)

SUBJECT: DANIEL ELLSBERG  
BURGLARY OF DR. LEWIS J. FIELDING'S OFFICE  
(INTELLIGENCE DIVISION)

A review of instant matter reveals no outstanding investigation in Los Angeles (OO) or auxiliary offices. Therefore, Los Angeles is placing the case in a closed status pending additional investigation requirements.

Los Angeles will continue to furnish the Bureau with newspaper articles relative to the investigation of the break-in and court proceedings being conducted by the Los Angeles County District Attorney.

EX-103

REC-16

- ② - Bureau (RM)  
1 - Los Angeles

GSB/mjg  
(3)

1\*

27  
5 FEB 25 1974Hampden  
Walt

5 MAR 5 1974

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



UNITED STATES GOVERNMENT

# Memorandum

1 - Mr. W. O. Regan  
1 - Mr. W. W. Hamilton  
1 - Mr. C. A. Regan

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. ☒  
Dep. AD Inv. ☒  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
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Spec. Inv. \_\_\_\_\_  
Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

TO : Mr. W. R. Wannall

DATE: 3/4/74

FROM : Mr. W. O. Cregar

SUBJECT: TESTIMONY OF [REDACTED]  
BEFORE FEDERAL GRAND JURY,  
WASHINGTON, D.C., 3/5/74,  
CONCERNING JOHN D. EHRLICHMAN

This is to record request for testimony of [REDACTED] before Federal Grand Jury, 3/5/74.

Attached is a copy of FD-302 setting forth an interview with John D. Ehrlichman on 5/1/73.

On 3/1/74, [REDACTED] WFO and [REDACTED] CI-2, Division 5, conferred with Attorney Charles Breyer, Special Prosecutor's Office, concerning details of the attached Ehrlichman interview. There were no problems encountered in the conference, but Attorney Breyer did ask if [REDACTED] had retained notes made during the interview. He was advised that notes taken during the interview had been destroyed and that the FD-302 was the written record of the interview.

Attorney Breyer requested that [REDACTED] be present at the Federal Courthouse Building, Washington, D.C., on 3/5/74, to testify before the Grand Jury in this matter.

## ACTION:

In accordance with Attorney Breyer's request, SA Regan will appear at the Federal Courthouse to testify on 3/5/74.

Enclosure

65-74060

CAR:aof/sat  
(4)

EX-111

REC-67

EX-111

MAR 19 1974

PERS. REQ UNIT



5/1/73

Date of transcription

8-

JOHN D. EHRLICHMAN, former Assistant to the President, was interviewed in the presence of his attorneys, JOHN WILSON and FRANK H. STRICKLER in their offices at 815 15th Street, N.W., Washington, D. C.

Mr. EHRLICHMAN was advised that he was being contacted at the request of the Department of Justice to determine if he has any knowledge regarding the whereabouts of results of investigation conducted by the White House including reports, memoranda or other data concerning the "Pentagon Papers" case, any defendants in that case or any members of families of defendants.

Mr. EHRLICHMAN furnished the following information:

There must be papers covering investigation of DANIEL ELLSBERG. Mr. EHRLICHMAN recalled a project to prepare a psychiatric profile on ELLSBERG. It has been over a year, however, since Mr. EHRLICHMAN has seen anything on the "Pentagon Papers" investigation.

As regards defendant ANTHONY RUSSO, Mr. EHRLICHMAN had heard nothing of this individual until after his indictment.

Regarding members of families of defendants, Mr. EHRLICHMAN recalled seeing FBI reports which had information about ELLSBERG's wife.

Mr. EHRLICHMAN noted he had also seen FBI reports containing information about NEIL SHEEHAN of "The New York Times."

Mr. EHRLICHMAN maintained a newspaper clipping file on the "Pentagon Papers" case which he kept in a file

5/1/73

Washington, D. C.

65-11613

Interviewed on

at

File #

and

CAR:jak

5/1/73

Date dictated

ENCLOSURE

65-74060-4684



9-

cabinet. This file has since been sent to the President's files, however, and Mr. EHRLICHMAN assumed the material was now in "Archives".

White House investigation concerning the "Pentagon Papers" matter was handled out of the office of EGIL KROGH and DAVID YOUNG. The results of that investigation must have been maintained there. Mr. EHRLICHMAN did not know the whereabouts of what KROGH, YOUNG, HOWARD HUNT and GORDON LIDDY produced as a result of their investigation.

Mr. EHRLICHMAN reiterated he has not seen any material covering White House investigation of the "Pentagon Papers" case for more than a year.

Mr. EHRLICHMAN noted stories had been published in the newspaper today quoting information he furnished the FBI last Friday and he objected to this disclosure of information.

Mr. WILSON stated he wanted Mr. EHRLICHMAN's objection to disclosure of information made a matter of record.



UNITED STATES GOVERNMENT

## Memorandum

1 - Mr. R. Gebhardt  
 1 - Mr. W. R. Wannall  
 1 - Mr. W. W. Hamilton

DATE: 3/22/74

TO : Mr. W. R. Wannall *WRC*FROM : F. S. Putman, Jr. *10-*

SUBJECT: DISPOSITION OF U.S. GOVERNMENT DOCUMENTS  
 LAST IN THE POSSESSION OF EGIL KROGH, JR.

Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
 Dep. AD Inv. \_\_\_\_\_  
 Asst. Dir.: \_\_\_\_\_  
 Admin. \_\_\_\_\_  
 Comp. Syst. \_\_\_\_\_  
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 Legal Coun. \_\_\_\_\_  
 Telephone Rm. \_\_\_\_\_  
 Director Sec'y \_\_\_\_\_

Purpose is to request authority to furnish copies of Krogh documents presently in custody of WFO to Mr. James D. St. Clair, Special Counsel to the President.

On 5/10/73, Security Officer, Department of Transportation (DOT), advised that Egil Krogh, former White House aide and "plumber," had resigned from DOT and had left various documents in his office. We advised the Department and upon instructions from the Department examined these documents and prepared an inventory, copies of which were furnished to the Department and to the Special Prosecutor's Office (SPO). On 5/14/73, these documents were examined by a Departmental attorney who advised he could see no information of value to our investigation concerning Daniel Ellsberg. Subsequently, SPO made two requests for copies of certain of these documents. Since majority of the documents appear to be internal White House communications, possibility existed that Executive privilege could attach to them and the Attorney General (AG) was requested to contact The White House relative to providing requested copies to SPO. After contact with The White House, authorization was granted by the AG in these two instances and copies of the Krogh documents were furnished to SPO.

Since Krogh pled guilty on 11/30/73 to a charge of violating the civil rights of Daniel Ellsberg's former psychiatrist, continued retention of these documents by WFO appeared unwarranted. Therefore, the AG was requested by memorandum dated 1/17/74 to advise us what disposition he desired of the Krogh documents. A copy of this letter

Enclosure

65-74060

WWH:sjg  
 (4)

REC-19

EX-112

4 MAR 23 1974

CONTINUED - OVER

84 APR 5 1974



Memorandum to Mr. W. R. Wannall

Re: Disposition of U.S. Government Documents  
Last in the Possession of Egil Krogh, Jr.  
65-74060

to the AG was furnished to SPO and by letter dated 1/25/74 the SPO requested that the documents be furnished by the FBI to that office. Following receipt of this letter, we directed a second letter to the AG on 2/4/74 advising of the SPO request. In this letter we also requested an early response as to his desires for disposition of the documents and requested that an appropriate person at The White House be so informed as to disposition because some documents appeared to be White House communications accumulated by Krogh during his employment on The White House Staff. Also, on 2/6/74, Mr. Kevin Maroney, Deputy Assistant AG, was contacted by Supervisor W. W. Hamilton at which time it was emphasized to Mr. Maroney that in the past any requests pertaining to acquisition of the Krogh documents by SPO had been referred to the Department for the AG to obtain White House approval. Mr. Maroney was also advised that many of the Krogh documents appeared to be internal White House communications and it was requested that White House approval be obtained by the Department, as in the past, prior to authorizing the FBI to release any of the Krogh documents to SPO.

By letter dated 3/6/74 from Assistant AG Petersen to J. Fred Buzhardt, Special Counsel to the President, the Department informed The White House of the SPO request for the Krogh documents. By letter dated 3/20/74 (attached), the Department informed us that Mr. St. Clair has requested that all the Krogh documents that appear to be internal White House communications be delivered to his office for review and consideration of the SPO request. In this letter the Department also requested that we Xerox copy all of the Krogh documents that appear to be internal White House communications and deliver a set of such copies to Mr. St. Clair. The Department further instructed that documents presently in the custody of the Bureau should be retained until directed otherwise by the AG.



12-

Memorandum to Mr. W. R. Wannall  
Re: Disposition of U.S. Government Documents  
Last in the Possession of Egil Krogh, Jr.  
65-74060

RECOMMENDATION:

That, if approved, the Krogh documents be reviewed and Xerox copies be made of those documents which appear to be internal White House communications and delivered to Mr. St. Clair at The White House by liaison. An inventory will be made of the documents delivered to be maintained at the Bureau. It is noted that these documents are presently in custody of WFO and WFO has been advised that documents should be retained until otherwise instructed by the Bureau.

WHA

MSC  
BH

N

wfo

RSC

WAP



3/23/72

13-

Prepared in to support authority to furnish copies  
of Report of the ... to ...  
Mr. James H. ... Special Counsel to the President.

On 1/10/73, Robert Gilder, Director of Transportation (SFO), advised that Bill Krogh, a White House aide, had "lost" two copies of a letter from the Department and upon investigation over the Department, located them at home and prepared an inventory, copies of which were furnished to the Department and to the Special Prosecutor's Office (SFO). On 5/16/73, these documents were received by SFO and a letter dated 5/16/73 arrived by airmail from the Department of Justice, in which it was requested that the SFO make two requests for copies of certain of these documents. Since majority of the documents appear to be internal White House communications, possibility existed that Executive privilege could attach to them and the Attorney General was requested to contact the White House relative to this matter. A request was made to the White House, and copies were requested by the SFO. These two instances and copies of the Krogh documents were furnished to SFO.

Since Krogh pled guilty on 11/30/73 to a charge of violating the civil rights of Daniel Ellsberg's former psychiatrist, continued retention of these documents by WFO appeared unwarranted. Therefore, the AG was requested to return the documents to Ellsberg as part of the settlement of the lawsuit. A copy of this letter is being furnished to the FBI.

Enclosure

- 66-74060

11:51  
(2)

CONTINUED - OVER

65-44060



14-  
to Mr. H. H. Tamm  
Disposition of U.S. Government Documents  
Lost in the Possession of Earl Hugh, Jr.  
7-10-74

to the AG was furnished to AG by letter dated 1/15/74  
in which the AG was advised that the documents were  
located in the possession of Earl Hugh, Jr. and that  
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documents were located in the possession of Earl Hugh, Jr.

By letter dated 3/6/74, from Assistant AG  
to J. Ward Lambert, Special Counsel to the AG, the  
AG was advised that the documents were located in the  
possession of Earl Hugh, Jr. and that the AG was  
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of Earl Hugh, Jr. and that the AG was advised that the  
documents were located in the possession of Earl Hugh, Jr.



Re: Discussion of U.S. Government Documents  
List in the Proceedings of Phil Knight, Jr.  
15-74400

that, if approved, the above documents be reviewed and removed from the file of the Commission which appear to be internal office communications and delivered to Mr. C. C. Winter and White House by liaison. An inventory will be made of the documents delivered to the Commission and the results of the review will be reported to the Commission. The Commission will be kept advised of the progress of the review and the results of the review will be reported to the Commission. The Commission will be kept advised of the progress of the review and the results of the review will be reported to the Commission.



FBI

Date: 3/28/74

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL \_\_\_\_\_  
(Priority)

TO: Director, FBI (65-74060)

FROM: SAC, WFO (65-11613)(P)

DANIEL ELLSBERG;  
BURGLARY OF DR. LEWIS FIELDING's  
OFFICE  
(INTD)

ReLAtel 3/26/74.

As a matter of expediency WFO wishes to point out for the information of the Deputy District Attorney, Los Angeles, that [REDACTED] as a party to both of the EHRLICHMAN interviews - on April 27 and May 1, 1973. This suggests that perhaps appearances of [REDACTED] in Los Angeles might not be necessary.

WFO will appreciate a clarification of that particular matter as well as of that paragraph of the teletype beginning "It is the expectation of the DA's Office...."

- ② Bureau
- 2 - Los Angeles (105-27952)
- 1 - WFO

HWS:jrb  
(5)

EX-116 REC-67

65-74060-4689

2 MAR 28 1974

APR 10 1974

Special Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

U.S. Government Printing Office: 1972 - 455-574



1 - Mr. R. E. Gebhardt  
1 - Mr. W. R. Wannall  
1 - Mr. J. A. Mintz  
1 - Mr. W. W. Hamilton  
March 29, 1974

17-  
The Attorney General

Director, FBI

REC-74  
115-114060-4688

**DISPOSITION OF U. S. GOVERNMENT DOCUMENTS  
LAST IN THE POSSESSION OF EGIL KROGH, JR.**

**ACTION MEMORANDUM**

Reference is made to memorandum of Mr. Henry E. Petersen, Assistant Attorney General, Criminal Division, dated March 20, 1974, which advised that Mr. James D. St. Clair, Special Counsel to the President, has requested that all the Krogh documents that appear to be internal White House communications be delivered to Mr. St. Clair's office for review and consideration of the request of the Special Prosecutor to obtain these documents. Referenced memorandum also requested that this Bureau provide Xerox copies to Mr. St. Clair of all the Krogh documents appearing to be internal White House communications and retain the original documents in our custody until otherwise directed by you.

It is respectfully suggested that a proper determination, as to which of the Krogh documents are pertinent to Mr. St. Clair's request, can best be made by the Justice Department with copies of the selected documents thereafter being delivered to Mr. St. Clair at The White House by your office.

Therefore, unless advised to the contrary, this Bureau will deliver to you all of the original Krogh documents presently being maintained by us for your appraisal and consideration in complying with Mr. St. Clair's request. It would be most appreciated if you would advise this Bureau, at your earliest convenience, the identity of the appropriate individual at the Justice Department to whom delivery of these documents should be made.

1 - Deputy Attorney General

1 - Administrative Assistant to the Attorney General

2 - Watergate Special Prosecution Force - By Courier Service

WWH:mjg  
(11)

SEE NOTE PAGE TWO

TELETYPE UNIT ☐



The Attorney General

12

NOTE:

See memorandum of F. S. Putman, Jr., to W. R. Wannall  
dated 3/27/74.

## Memorandum

TO : Mr. W. R. Wannall 19-

FROM : F. S. Putman, Jr.

SUBJECT: DISPOSITION OF U. S. GOVERNMENT DOCUMENTS  
LAST IN THE POSSESSION OF EGIL KROGH, JR.

1 - Mr. R. E. Gebhardt  
 1 - Mr. W. R. Wannall  
 1 - Mr. J. A. Mintz  
 DATE: 3/27/74  
 1 - Mr. W. W. Hamilton

Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
 Dep. AD Inv. \_\_\_\_\_  
 Asst. Dir.: \_\_\_\_\_  
 Admin. \_\_\_\_\_  
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 Legal Coun. \_\_\_\_\_  
 Telephone Rm. \_\_\_\_\_  
 Dir. Sec'y \_\_\_\_\_

Reference is made to memorandum F. S. Putman, Jr. to W. R. Wannall dated 3/22/74 (copy attached) wherein authority was obtained to furnish copies of Krogh documents appearing to be internal White House communications to Mr. James St. Clair, Special Counsel to the President. *EGIL KROGH JR.*

By letter dated 3/20/74 (copy attached), Henry E. Petersen, Assistant Attorney General, informed us that Mr. St. Clair had requested that all of the Krogh documents presently in possession of the FBI, which appear to be White House communications, be delivered to Mr. St. Clair's office for review and consideration of a request of the Special Prosecutor's Office to obtain these documents. The Department also requested that we xerox copies of all the Krogh documents appearing to be White House communications and deliver a set of such copies to Mr. St. Clair. The Department further instructed that the original documents presently in custody of the Bureau should be retained until directed otherwise by the Attorney General. *EX-115 REC-71 65-44060-4688*

On 3/27/74 the mechanics of transferring xerox copies of the Krogh documents to Mr. St. Clair along with appropriate inventories of these documents were discussed with Inspector John A. Mintz, Office of Legal Counsel. At this time, Mr. Mintz stated that it was his opinion the Bureau should not deliver copies of these documents directly to The White House but should deliver the original documents themselves to the Department, copies to be furnished to The White House by Attorney General. Mr. Mintz pointed out that the Krogh documents could possibly become evidence in a criminal or impeachment proceeding and should properly be furnished to The White House by the Attorney General and not by the FBI. Also it was Mr. Mintz' *21 APR 4 1974*

Enclosures (2) - *Sent 3-29-74 edm*

WH:mjg  
 (5)

CONTINUED - OVER



Memorandum to Mr. W. R. Wannall

Re: Disposition of U. S. Government Documents  
Last in the Possession of Egil Krogh, Jr.

20-

opinion that the FBI should not be placed in the position of making a determination as to which documents could be considered internal White House communications or otherwise pertinent to Mr. St. Clair's request.

Based upon the opinion of the Office of Legal Counsel as cited above, the following recommendation is made concerning disposition of the Krogh documents, which recommendation supersedes that set forth in referenced memorandum of 3/22/74 wherein it was recommended and approved that the Krogh documents be reviewed and xeroxed copies be made of those documents appearing to be internal White House communications to be delivered to Mr. St. Clair at The White House by liaison.

RECOMMENDATION:

*attached.*  
If approved, a letter will be directed to the Attorney General in which it will be respectfully suggested that a determination as to which Krogh documents are pertinent to Mr. St. Clair's request, can best be made by the Department and the selected documents, thereafter, furnished to The White House by the Department. The Attorney General will also be advised that all of the original Krogh documents presently being maintained by the FBI will be delivered to the Department for their appraisal and consideration in complying with Mr. St. Clair's request.

*W.R.W.*

*[Signature]*

*[Signature]*  
*[Signature]*

*W.R.W.*  
*[Signature]*

*[Signature]*

*K*

1 - Mr. R. E. Gebhardt  
1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

March 28, 1974

Special Prosecution Force  
U. S. Department of Justice

21-

BY COURIER SERVICE

Director, FBI

DISPOSITION OF U. S. GOVERNMENT  
DOCUMENTS LAST IN THE POSSESSION  
OF EGIL KROGH, JR.

*McLEK*

Reference is made to your memorandum dated January 25, 1974, which requested delivery to your office of all of the documents obtained from the office of Egil Krogh, Jr., following his resignation as Undersecretary of the Department of Transportation.

Enclosed for your information is a memorandum to this Bureau dated March 20, 1974, from Henry E. Petersen, Assistant Attorney General, Criminal Division, which sets forth certain instructions for this Bureau pertaining to the disposition of the Krogh documents.

Enclosure  
WWH:mjg/mys  
(6)

NOTE:

Refer to memorandum F. S. Putman to W. R. Wannall dated 3/22/74, captioned as above.

REC-42

65-74060-4691

EX-112

6 APR 3 1974

RECEIVED  
FBI

APR 3 1974

65-74060-4691

BY COURIER SVC.  
MAR 28 P.M.  
FBI

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
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Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

84 APR 14 1974

MAIL ROOM ☒

TELETYPE UNIT ☐



FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

APR 03 1974

TELETYPE

22-

NR 002 LA CODE

8:57 AM URGENT APRIL 3, 1974 DLM

TO DIRECTOR (65-74060)

ATTN INTD

WASHINGTON FIELD (65-11613)

FROM LOS ANGELES (105-27952) (P)

Asst. Dir.:	
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Legal Coun.	
Telephone Rm.	
Director Sec'y	

DANIEL ELLSBERG; BURGLARY OF DR. LEWIS J. FIELDING'S OFFICE  
(INTD).

RE LOS ANGELES NITELS MARCH 26 AND MARCH 29, 1974, BUTELCALLS  
TO LOS ANGELES, MARCH 29 AND APRIL 1, 1974, AND WASHINGTON  
FIELD AIRTEL MARCH 28, 1974.

ON APRIL 2, 1974, STEPHEN TROTT, DEPUTY LOS ANGELES COUNTY  
DISTRICT ATTORNEY (DA), WAS TELEPHONICALLY CONTACTED. TROTT IS  
HEAD OF PROSECUTION TEAM IN PERJURY CASE RE JOHN D. EHRLICHMAN.

TROTT ADVISED HE LEARNED OF BUREAU'S INTEREST AND INTERVIEW  
OF DR. FIELDING, AS WELL AS INTERVIEW OF FIELDING'S ATTORNEY,  
HENRY SWERDLOW, WHEN HE READ SOME FBI REPORTS WHICH HE RECEIVED  
FROM DAVID NISSEN SOMETIME AFTER CONCLUSION OF DANIEL ELLSBERG'S  
TRIAL. TROTT DID NOT RECALL WHEN HE RECEIVED THESE REPORTS,  
EXCEPT THAT IT OCCURRED AFTER TRIAL WAS TERMINATED. IT SHOULD  
BE NOTED THAT JUDGE WILLIAM BYRNE GRANTED DEFENSE MOTION FOR

END PAGE ONE APR 8 1974



DISMISSAL ON ELLSBERG ON MAY 11, 1973. NISSEN WAS DEPARTMENTAL ATTORNEY IN CHARGE OF GOVERNMENT'S CASE.

23-  
A REVIEW OF JUDGE BYRNE'S PRESENTATION WHEN HE GRANTED DEFENSE MOTION REVEALS THAT BYRNE TOUCHED HEAVILY ON BURGLARY OF FIELDING'S OFFICE BY E. HOWARD HUNT AND G. GORDON LIDDY, WHICH PRESENTATION IS CONTAINED IN LOS ANGELES TEL DATED MAY 11, 1973. IT OCCURS TO LOS ANGELES THAT TROTT OR AN ASSOCIATE HAD HEARD OR HAD HEARD OF THAT PRESENTATION BY BYRNE AND IN THAT MANNER LEARNED OF BUREAU'S INTEREST IN FIELDING, THUS PROMPTING REQUEST FOR REPORTS FROM NISSEN'S OFFICE. AT THIS TIME, TROTT DID NOT ELABORATE. BUREAU AUTHORITY WAS PREVIOUSLY GRANTED FOR FD-302'S RE INTERVIEW OF EHRLICHMAN AT WASHINGTON, D. C., TO BE FURNISHED TO DA JOSEPH BUSCH AND REPORTED IN LA TELS JUNE 4-5, 1973, BOTH ENTITLED "MCLEK".

TROTT AGAIN INDICATED HIS FEELING THAT THREE WASHINGTON FIELD OFFICE (WFO) AGENTS SHOULD BE PRESENT DURING TRIAL. HE SAID THAT JOHN EHRLICHMAN, NOT ONLY BEFORE GRAND JURY BUT ALSO IN PUBLIC STATEMENTS HAS BEEN HIGHLY CRITICAL OF BUREAU'S HANDLING OF HIS INTERVIEWS, INDICATING THEY LACKED COMPETENT QUESTIONING AND ALSO INDICATING HIS FEELING THAT BUREAU HAD

END PAGE TWO



PAGE THREE

24  
GENERALLY MISHANDLED THAT ASPECT OF INVESTIGATION OF BURGLARY OF FIELDING'S OFFICE. TROTT SAID HE FEELS EHRLICHMAN WILL CONTINUE TO DO THIS DURING UPCOMING TRIAL, AND TROTT FEELS BUREAU MAY WISH TO HAVE MORE THAN ONE AGENT ON HAND TO REFUTE EHRLICHMAN'S STATEMENTS AND TO STRENGTHEN ANY BUREAU CONTENTION CONCERNING ACCURACY OF FD-302'S AS WELL AS STRENGTHENING DA'S CASE. TROTT SAID HE DID NOT FEEL BUREAU SHOULD HAVE TO GET INTO A PUBLIC DEBATE WITH EHRLICHMAN ON MATTER AND PRESENCE OF CORROBORATING AGENTS WOULD HELP TO ALLAY THAT MATTER.

IT IS OPINION OF LOS ANGELES THAT [REDACTED] AS PREVIOUSLY REQUESTED SHOULD BE ONLY AGENT TO APPEAR IN LOS ANGELES AT OUTSET OF TRIAL AND SHOULD TROTT'S CONCERN BE BORNE OUT RE TESTIMONY OF EHRLICHMAN, OTHER TWO AGENTS, [REDACTED], CAN THEN APPEAR.

TROTT ALSO INDICATED HE WOULD WANT TO HAVE A PRE-TRIAL CONFERENCE WITH LA AGENTS G. [REDACTED], [REDACTED]

[REDACTED] AS SOON AS POSSIBLE. THIS IN REGARDS THE INTERVIEW WITH FIELDING AND HIS ATTORNEY AND THE INTERVIEW WITH [REDACTED] TROTT WAS ADVISED BUREAU AUTHORITY WOULD BE SOLICITED AND WHEN RECEIVED HIS OFFICE WOULD BE NOTIFIED. PURPOSE OF THE CONFERENCE WAS SET OUT IN REFERENCED LA NITELS. INTERVIEWS LOCATED LA REPORTS  
END PAGE THREE



LA 105-27952

25-

PAGE FOUR

DATED JULY 29, 1971, AUGUST 11, 1971, BOTH ENTITLED "DANIEL ELLSBERG; ESP-X", AND LA REPORT JUNE 8, 1973 [REDACTED] ENTITLED "DANIEL ELLSBERG; ANTHONY JOSEPH RUSSO, JR.; CONSPIRACY; TGP, ESP".

BUREAU AUTHORITY REQUESTED FOR ABOVE NAMED LA AGENTS TO PROCEED WITH PRETRIAL INTERVIEW WHEN DATE SETTLED.

BUREAU ALSO REQUESTED TO COMMENT RE LA'S FEELING REGARDING APPEARANCE OF WFO AGENTS IN LA.

LOS ANGELES WILL ADVISE BUREAU OF FUTURE REQUESTS OF DA'S OFFICE.

END

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TIMU BUREAU

CCJ FBIHQ CLR



## COMMUNICATIONS SECTION

MAR 30 1974

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Director Sec'y	_____

NR 037 LA CODE

900PM NITEL MARCH 29, 1974 JJS

26-

TO DIRECTOR (65-74060) ATTN: INTD

WASHINGTON FIELD (65-11613)

FROM LOS ANGELES (105-27952) (P) 3P



DANIEL ELLSBERG; BURGLARY OF DR. LEWIS J. FIELDING'S OFFICE  
(INTD).

RE LOS ANGELES NITEL MARCH 26, 1974, BUPHONE CALL TO LOS ANGELES  
MARCH 28, 1974.

IN ORDER TO FURTHER CLARIFY INFORMATION IN REFERENCED  
NITEL, ROBERT ALTMAN, DEPUTY DISTRICT ATTORNEY (DA), LOS  
ANGELES COUNTY, WAS CONTACTED AND HE ADVISED AS FOLLOWS:

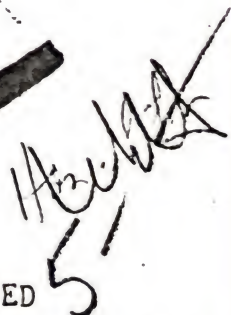
(1) RE SA'S OF WASHINGTON FIELD OFFICE (WFO); IT  
WILL NOT BE NECESSARY FOR ONE OF THE THREE AGENTS TO APPEAR  
IN LOS ANGELES. ALTMAN SAID WHICHEVER ONE WOULD BE MOST  
KNOWLEDGEABLE ABOUT INTERVIEWS WITH JOHN EHRLICHMAN WOULD  
SUFFICE. HE INDICATED THAT [REDACTED] WHO PARTICIPATED IN  
BOTH INTERVIEWS, WOULD APPEAR TO BE MOST APPROPRIATE ONE.

(2) ALTMAN SAID THERE ARE CERTAIN STATEMENTS ATTRIBUTED  
TO EHRLICHMAN CONTAINED IN FD-302'S WHICH HIS OFFICE INTENDS  
TO BRING UP IN THEIR EXAMINATION OF HIM DURING TRIAL. THEY

END PAGE ONE

12 APR 8 1974

84 APR 11 1974

EX-11 REC-14 65-74060-469



PAGE TWO

PLAN TO HOLD A PRE-TRIAL CONFERENCE WITH SA FROM WFO TO MAKE SURE THAT THESE STATEMENTS IN WHICH THEY ARE INTERESTED ARE COMPLETELY ACCURATE, TO THE BEST OF THAT SA'S KNOWLEDGE. DA DOES NOT EXPECT TO QUESTION SA ON STAND UNLESS EHRlichman DENIES THOSE STATEMENTS APPEARING IN FD-302 AT WHICH TIME SA WOULD BE USED STRICTLY AS REBUTTAL WITNESS. ALTMAN WOULD NOT ELABORATE ON WHICH STATEMENTS HE WAS REFERRING TO AND SAID HE DID NOT WANT TO DISCLOSE DA'S TRIAL PLANS AT THIS TIME.

(3) ALTMAN SAID IT WOULD ONLY BE NECESSARY FOR EITHER

[REDACTED] TO BE AVAILABLE AS A WITNESS AND WHICHEVER ONE HAD CLEAREST RECOLLECTION OF EVENTS PERTAINING TO ATTEMPT TO INTERVIEW DR. FIELDING WOULD SUFFICE. HE SAID THERE WOULD BE A PRE-TRIAL CONFERENCE WITH THAT SA TO DETERMINE IF FBI'S ATTEMPT TO INTERVIEW DR. FIELDING CAME AS DIRECT RESULT OF FBI INVESTIGATION OF DANIEL ELLSBERG OR WAS IT RESULT OF A DIRECT REQUEST FROM GROUP KNOWN AS "PLUMBERS". IF THAT AGENT IS PUT ON WITNESS STAND, IT WOULD BE TO TESTIFY SOLELY TO WHAT APPEARS IN FD-302'S RE ATTEMPT TO INTERVIEW DR. FIELDING. IN SAME MATTER, [REDACTED] WHO RECEIVED THE TELCALL FROM DR. FIELDING'S ATTORNEY,

END PAGE TWO



LA 105-27952

28-

PAGE THREE

WOULD ONLY BE ASKED TO TESTIFY TO THOSE FACTS WHICH APPEAR IN HIS FD-302. ALTMAN SAID THAT HIS OFFICE WOULD NOT QUESTION ANY OF THE AGENTS BEYOND FACTS WHICH APPEAR IN FD-302'S AND THERE WOULD BE NO ATTEMPT AT DISCOVERY.

(4) ALTMAN ADVISED HE FEELS DEFENSE HAS NO RIGHT AND HE WILL FIGHT ANY ATTEMPT THAT DEFENSE MAKES TO OBTAIN ANY INFORMATION FROM FILES OF THE FBI. HE SAID IF TESTIFYING AGENTS REFER TO FD-302'S TO REFRESH THEIR MEMORIES, DEFENSE COULD CORRECTLY ASK TO SEE THOSE FD-302'S, BUT COULD NOT GO BEYOND THAT POINT.

BUREAU REQUESTED TO SOLICIT DEPARTMENTAL INSTRUCTIONS IN THIS MATTER AND LOS ANGELES WILL ADVISE BUREAU OF ANY ADDITIONAL CONTACT WITH DA'S OFFICE.

END

MSI FBIHQ ACK 4 CLR



FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

APR 06 1974

TELETYPE

NR 022 LA COD E

1041 PM NITEL APRIL 5, 1974 RWM

TO DIRECTOR (65-74060) ATTN: INTD

WASHINGTON FIELD (65-11613)

FROM LOS ANGELES (105-27952) (P) 1P.

Asst. Dir.:	
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Legal Coun.	
Telephone Rm.	
Director Sec'y	

DANIEL ELLSBERG; BURGLARY OF DR. LEWIS J. FIELDING'S OFFICE (INTD).

RE LOS ANGELES NITEL APRIL 3, 1974.

ON THIS DATE, DEPUTY DISTRICT ATTORNEY (DA), LOS ANGELES COUNTY, ROBERT BURNETT, ADVISED START OF PERJURY TRIAL OF JOHN D. EHRLICHMAN HAS BEEN POSTPONED FROM APRIL 15, 1974 TO MAY 20, 1974, AT REQUEST OF DEFENSE COUNSEL.

BURNETT ADVISED HIS OFFICE STILL WISHES AN EARLY PRE-TRIAL HEARING WITH LOS ANGELES AGENTS.

LOS ANGELES WILL MAINTAIN CONTACT WITH DA'S OFFICE AND ADVISE BUREAU AND WASHINGTON FIELD OF ANY FUTURE CHANGES IN TRIAL PLANS AND WILL AWAIT BUREAU INSTRUCTIONS RE LOS ANGELES AGENTS MEETING WITH DA AND WASHINGTON FIELD AGENT (S) TRAVEL TO LOS ANGELES.

EID

EX-116

REC 98

65-74060-4643

12 APR 9 1974

70 APR 12 1974

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NR 007 LA CODE

922PM NITEL MARCH 26, 1974 BMK

TELETYPE

TO DIRECTOR (65-74060) ATTN: INTD

WASHINGTON FIELD (65-11613)

FROM LOS ANGELES (105-27952) (P) 3P

Asst. Dir.:	
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Legal Coun.	
Telephone Rm.	
Director Sec'y	

DANIEL ELLSBERG; BURGLARY OF DR. LEWIS J. FIELDING'S  
OFFICE (INTD).

WILLIAM BURNETT, DEPUTY DISTRICT ATTORNEY (DA), LOS  
ANGELES COUNTY, TELEPHONICALLY ADVISED LOS ANGELES COUNTY  
TRIAL CONCERNING ALLEGATION OF PERJURY AGAINST JOHN  
EHRlichman IS SCHEDULED TO BEGIN APRIL 15, 1974. HE  
BELIEVES THAT JURY SELECTION WILL REQUIRE ONE TO TWO WEEKS.

HE SAID FOLLOWING SPECIAL AGENTS (SA) OF LOS ANGELES  
AND WASHINGTON FIELD OFFICES (WFO) WILL BE NEEDED TO TESTIFY  
IN THIS MATTER AND HE WILL DO EVERYTHING IN HIS POWER TO  
GIVE THEM A MINIMUM OF TWO DAYS NOTICE PRIOR TO THEIR  
APPEARANCE DATE.

EX-116 REC-48

WILL

BE NEEDED TO TESTIFY IN CONNECTION WITH THEIR INTERVIEW OF  
DR. FIELDING ON JULY 20, 1971, AS WELL AS THEIR INTERVIEW OF

END PAGE ONE

12 APR 8 1974

FIVE



PAGE TWO

[REDACTED] BEVERLY HILLS, ON APRIL 30, 1973. [REDACTED] WILL BE NEEDED AS WITNESS RE PHONE CALL HE RECEIVED FROM HENRY SWERDLOW, ATTORNEY FOR DR. FIELDING. [REDACTED]

BURNETT ADVISED FOLLOWING AGENTS FROM WFO WOULD ALSO BE NECESSARY WITNESSES. THEY ARE [REDACTED]

[REDACTED] WHO INTERVIEWED JOHN EHRLICHMAN ON APRIL 27 AND MAY 1, 1973.

IT IS THE EXPECTATION OF DA'S OFFICE TO PROVE PERJURY ALLEGATION AGAINST EHRLICHMAN BY SHOWING FBI WAS AWARE OF FIELDING'S ASSOCIATION WITH DANIEL ELLSBERG PRIOR TO BREAK -IN AT FIELDING'S OFFICE. IT IS THEIR BELIEF EHRLICHMAN PERJURED HIMSELF BEFORE THE GRAND JURY, WHICH SAT IN MAY AND JUNE OF 1973, WHEN HE DENIED PRIOR KNOWLEDGE OF BUREAU'S INTEREST IN DR. FIELDING.

ABOVE INTERVIEWS ARE LOCATED IN WFO AIRTEL AND LHM DATED MAY 1, 1973, AND ENTITLED "DANIEL ELLSBERG; ANTHONY JOSEPH RUSSO, JR."; LOS ANGELES REPORT OF [REDACTED]

[REDACTED] DATED JULY 29, 1971, ENTITLED "DANIEL ELLSBERG;

END PAGE TWO

32-

ESP - X" - LOS ANGELES REPORT OF [REDACTED] DATED AUGUST 11, 1971, WHICH CARRIED SAME CAPTION, AND LOS ANGELES REPORT OF [REDACTED] DATED JUNE 8, 1973, ENTITLED "DANIEL ELLSBERG; ANTHONY JOSEPH RUSSO, JR.; CONSPIRACY, TGP, ESP."

IN VIEW OF THE WIDE SPREAD POLITICAL IMPLICATIONS OF THIS  
MATTER AND FURTHER IN VIEW OF INTENSE DEPARTMENTAL INTEREST,  
NO CONTACT HAS BEEN HAD TO DATE WITH THE USE, LOS ANGELES.

BUREAU REQUESTED TO SOLICIT DEPARTMENTAL INSTRUCTIONS IN  
THIS MATTER.

IN THE INTERIM, LOS ANGELES WILL ADVISE BUREAU OF ANY  
ADDITIONAL CONTACT BY DEPUTY DISTRICT ATTORNEY WILLIAM BURNETT.

END

ACK FOR 2

JPS FBIHQ CLR



1 - Mr. R. E. Gebhardt  
1 - Mr. E. W. Walsh

The Attorney General

April 16, 1974

Director, FBI

1 - Mr. W. R. Wannall  
1 - Mr. J. A. Mintz  
1 - Mr. W. W. Hamilton

DANIEL ELLSBERG; BURGLARY OF  
DR. LEWIS J. FIELDING'S OFFICE

ACTION MEMORANDUM

Reference is made to telephone conversation on April 8, 1974, between Mr. Kevin Maroney, Deputy Assistant Attorney General, and Special Agent William W. Hamilton of this Bureau concerning possible testimony of FBI personnel in the perjury trial of John Ehrlichman to be held in Los Angeles County Court, Los Angeles, California.

Los Angeles County District Attorney's Office (DAO) has advised our Los Angeles Office that it desires testimony of certain Special Agents in the upcoming perjury trial of John Ehrlichman, former White House aide, scheduled to commence in Los Angeles County Court on May 20, 1974. DAO has requested that we make available the Agent who is most knowledgeable about interviews of John Ehrlichman conducted by this Bureau on April 27, 1973, and May 1, 1973.

[redacted] presently assigned to FBI Headquarters, participated in both interviews of Ehrlichman and DAO has stated that [redacted] would be most appropriate to testify in this regard. DAO does not expect to question [redacted] on the stand unless Ehrlichman denies information appearing in FD-302s prepared after the interviews, at which time [redacted] would be used as a rebuttal witness. However, DAO has also advised that it believes [redacted]

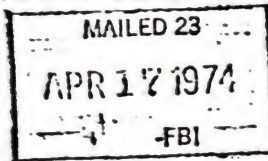
[redacted] presently assigned to Washington Field Office, should also be available for testimony as they also participated in the above interviews of Ehrlichman.

Assoc. D.  
Dep. Dir.  
Dep. AD:  
Asst. Dir.:  
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Telephone Rm.  
Director Sec'y

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(12)

WWH:mjg/meb meb



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SEE NOTE PAGE THREE  
APR 17 1974  
FSP/R

58 APR 23 1974

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The Attorney General

34  
[redacted] DAO desires that [redacted] both of our Los Angeles Office, be available for testimony concerning an attempt on July 20, 1971, to interview Dr. Lewis J. Fielding, psychiatrist of Daniel Ellsberg, whose office was burglarized by The White House "plumbers." In this same matter, [redacted] Los Angeles Office, would be asked to testify to a telephone call received from Harry Swerdlow, attorney for Dr. Fielding, who telephonically advised [redacted] on July 27, 1971, that Dr. Fielding would decline to be interviewed by the FBI.

[redacted] will also be requested to testify in connection with their interview of [redacted] Beverly Hills, California, on April 30, 1973.

DAO has stated that none of the Agents mentioned above would be questioned beyond facts which appear in FD-302s and there would be no attempt at discovery. DAO further advised it will fight any attempt that defense counsel makes to obtain any information from files of the FBI as it believes defense has no right to this information. It is DAO's opinion that if testifying Agents refer to FD-302s to refresh their memories, defense could correctly ask to see those FD-302s but could not proceed beyond that point.

This Bureau interposes no objection to the appearance of the above-named Agents to give testimony in Los Angeles County Court as requested by the DAO. However, since [redacted] participated in both interviews of Ehrlichman and appears the most knowledgeable to testify in this regard, it is suggested that [redacted] initially be made available for travel to Los Angeles and Special Agents Grampp and Schweppe be authorized to appear only if their testimony is considered necessary by DAO as trial proceeds.

Enclosed is one Xerox copy each of FD-302s pertaining to interviews of Ehrlichman on April 27, 1973, and May 1, 1973; attempted interview of Dr. Lewis J. Fielding on July 20, 1971; telephonic interview of Harry Swerdlow on July 27, 1971; and interview of B. L. Cork on April 30, 1973.



The Attorney General

35-

Pursuant to instructions of Mr. Maroney in referenced telephone conversation, two copies of this communication along with one Xerox copy each of the above-described enclosures are being furnished to the Special Prosecutor's Office.

Enclosures (5)

- 1 - The Deputy Attorney General
- 1 - Administrative Assistant to the Attorney General
- 2 - Watergate Special Prosecution Force - Enclosures (5)  
BY COURIER SERVICE

NOTE:

Refer to memorandum Putman to Wannall dated 4/3/74, wherein Mr. Kelley approved request for FBI Agents to testify, if called, in perjury trial against John Ehrlichman. Memorandum stated that if authority granted, this matter will be coordinated with appropriate official at Department. Kevin Maroney, Deputy Assistant Attorney General, telephonically requested 4/8/74, that we submit memorandum to Attorney General for Department approval of testimony by Agents. Maroney also instructed that copies of memorandum be directed to Special Prosecutor's Office.



FBI

Date: 4/15/74

36

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)Via AIRTEL \_\_\_\_\_  
(Priority)

TO: DIRECTOR, FBI (65-74060)

FROM: SAC, WFO (65-11613) (C)

36

ATTN: INTD

MC LEK

Dep. AD Adm.	_____
Dep. AD Inv.	_____
Asst. Dir.:	_____
Admin.	_____
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Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

Reference is made to Bureau call from Supervisor WILLIAM W. HAMILTON, Division 5, instructing that the material obtained from EGIL KROGH, JR. <sup>office</sup> be delivered to the office of Mr. JAMES A. WILDERROTTER, Room 4208, U. S. Department of Justice, for appropriate disposal.

Attached are 3 copies of an LHM concerning this matter. Two copies of the LHM were delivered with the EGIL KROGH, JR. material to Mr. WILDERROTTER's office on 4/15/74.

REC-16

EX-113

ENCLOSURE

2 - Bureau (Enc. 5)  
1 - WFO

CJJ:jak

(3)

APR 17 1974

Approved: 57A 2-1974  
Special Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

U.S. Government Printing Office: 1972 - 455-574





UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

Washington, D. C. 20535

April 15, 1974

37-

In Reply, Please Refer to  
File No.

**DISPOSITION OF UNITED STATES GOVERNMENT  
DOCUMENTS LAST IN POSSESSION OF EGIL KROGH, JR.**

When Egil Krogh, Jr. resigned from the Department of Transportation (DOT), he left in his office a number of documents. The Washington Field Office of the FBI was directed to obtain the material and to review it.

The data generally falls into three categories: White House material which Krogh took to the DOT, DOT material and personal material of Egil Krogh. These papers are in nine cartons and are submitted to the Department of Justice for disposal.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside.

65-74060-4696

ENCLOSURE



UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. W. R. Wannall *Wannall*

FROM : F. S. Putman, Jr.

SUBJECT: DANIEL ELLSBERG; BURGLARY OF  
DR. LEWIS J. FIELDING'S OFFICE

1 - Mr. E. W. Walsh  
1 - Mr. J. A. Mintz  
1 - Mr. R. E. Gebhardt  
DATE: 4/3/74  
1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

DATE: 4/3/74

1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

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Off. Coun. ☒  
Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

Purpose is to seek approval for Special Agents (SAs) to testify, if called, in Los Angeles County court in the upcoming perjury trial against John Ehrlichman, former White House aide.

Los Angeles Office, by teletype dated 3/26/74 captioned as above, advised that District Attorney's Office (DAO), Los Angeles County, Los Angeles, California, had stated that perjury trial against Ehrlichman is scheduled to begin 4/15/74 and that the DAO desires that certain SAs be made available to testify in this matter. Dr. Lewis J. Fielding was psychiatrist to Daniel Ellsberg and the burglary of his office by the White House "plumbers" seeking information concerning Ellsberg was a primary factor in dismissal of Federal charges against Ellsberg. DAO will attempt to prove perjury charge against Ehrlichman by showing FBI was aware of Ellsberg's association with Fielding prior to the burglary of Fielding's office. It is the DAO's belief that Ehrlichman perjured himself before a grand jury when he denied prior knowledge of FBI interest in Dr. Fielding.

By teletype dated 3/29/74, Los Angeles further advised that DAO has stated that [REDACTED] presently assigned Division V, would be the most appropriate to testify concerning two interviews of John Ehrlichman as [REDACTED] participated in both interviews. DAO said there are certain statements attributed to Ehrlichman contained in FD-302s covering these interviews which his office intends to bring up in their examination of Ehrlichman during trial. They plan to hold a pretrial conference with [REDACTED] to make sure these statements are completely accurate to the best of [REDACTED] knowledge. DAO does not expect to question [REDACTED] on stand unless Ehrlichman denies those statements appearing in FD-302s, at which time [REDACTED] would be used strictly as a rebuttal witness. DAO did not elaborate on which statements of Ehrlichman he was referring to and said he did not want to disclose DAO trial plans at this time. 111

65-74060

WVH:mjg  
(6)

Handled by memo  
To A/S 4/16/74.  
Walt

APR 19 1974

CONTINUED - OVER

LEGAL COUNSEL

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Memorandum to Mr. W. R. Wannall  
Re Daniel Ellsberg; Burglary of  
Dr. Lewis J. Fielding's Office  
65-74060

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DAO advised that either [redacted] or [redacted] both of the Los Angeles Office, would be called to testify concerning an attempt to interview Dr. Fielding and the SA called would be which ever one had the clearest recollection of events pertaining to the attempt to interview. DAO stated there would be a pretrial conference with either [redacted] to determine if the FBI's attempt to interview Dr. Fielding came as a direct result of FBI investigation of Daniel Ellsberg or as a result of a direct request from the "plumbers." If either SA is put on the witness stand, it would be to testify to what appears in FD-302s regarding attempt to interview Dr. Fielding. In this same matter, [redacted] Los Angeles Office, who received a telephone call from Dr. Fielding's attorney, would only be asked to testify to those facts which appear in his FD-302.

DAO stated that none of the Agents mentioned above would be questioned beyond facts which appear in FD-302s and there would be no attempt at discovery. DAO further advised they will fight any attempt that defense makes to obtain any information from files of the FBI as they believe defense has no right to this information. DAO stated if testifying Agents refer to FD-302s to refresh their memories, defense could correctly ask to see those FD-302s but could not proceed beyond that point.

We obtained initial knowledge of Dr. Lewis J. Fielding [redacted]

[redacted] Bureau Agents attempted to interview Fielding at which time he declined to be interviewed until he had consulted his attorney. Shortly thereafter, Fielding's attorney telephonically contacted the Los Angeles Office and advised that Fielding would decline to be interviewed. A review of Bureau files indicates that the name of Dr. Lewis J. Fielding or the fact that he was Ellsberg's analyst was never furnished to any individual at the White House by the FBI. However, on



Memorandum to Mr. W. R. Wannall  
Re: Daniel Ellsberg; Burglary of  
Dr. Lewis J. Fielding's Office  
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8/3/71, by letter to Egil Krogh, Jr., we furnished a background summary relative to Daniel Ellsberg in which we stated that

[REDACTED]

[REDACTED]

in Los Angeles report dated 7/19/71 which was disseminated to John Martin, Departmental Attorney, for Robert Mardian, Assistant Attorney General, and also to J. Fred Buzhardt, then at the Department of Defense. Los Angeles report dated 8/11/71 contained information that Dr. Fielding's attorney advised that Fielding refused to be interviewed by the FBI and this report was also disseminated to Martin and Buzhardt. On 9/23/71, Mardian requested overhears on Fielding anticipating Fielding's appearance before a Federal Grand Jury. It is noted that our original identification of Fielding as Ellsberg's psychiatrist was set forth in Los Angeles teletype dated 7/10/71 which was not disseminated.

On 6/5/73, our Los Angeles Office, pursuant to FBIHQ authority, furnished the Los Angeles District Attorney FBI interviews of Ehrlichman. Authority was furnished by then Acting Director Ruckelshaus and was pursuant to a request of Archibald Cox, Special Prosecutor, that the District Attorney, Los Angeles, be furnished this information. FD-302s pertaining to interviews of Dr. Fielding and his attorney were furnished to DAO by Departmental Attorney David Nissen who was conducting the Ellsberg trial shortly after case against Ellsberg was dismissed. For information, it is noted that investigation of burglary of Dr. Fielding's office was undertaken on 4/27/73 upon instructions of Federal Judge Byrne conducting trial of Ellsberg when information was received that Fielding's office had been burglarized on 9/3-4/71 by the White House "plumbers."

It is noted that DAO has stated that jury selection will require one to two weeks and he will attempt to give minimum of two days notice prior to appearance date of desired SAs.



Memorandum to Mr. W. R. Wannall  
Re: Daniel Ellsberg; Burglary of  
Dr. Lewis J. Fielding's Office  
65-74060

In summary the following points are noted:

1) Since we did not identify Fielding to The White House before the burglary of his office, it is not known how DAO plans to prove perjury based on Ehrlichman's alleged prior knowledge of FBI interest in Fielding before the burglary.

2) We can only assume that Ehrlichman possibly learned of information concerning Fielding contained in FBI reports disseminated in July, 1971, to Justice Department and Department of Defense.

3) DAO would not elaborate on statements of Ehrlichman they believe to constitute perjury and a review of the FD-302s of Ehrlichman's interview does not shed any light on this subject; however, if Bureau Agents are called upon to testify, they can only testify to the information appearing in the FD-302s.

RECOMMENDATION:

That authority be granted for SAs named above to testify, if called, in Los Angeles County court. If approved, this matter will be coordinated with appropriate official at Department to obtain any Department directives and also with Assistant Directors, Division V and Los Angeles.

WLF

*[Handwritten signature]*

*[Handwritten initials]*

*[Handwritten initials]*

*[Handwritten signature]*



UNITED STATES GOVERNMENT

## Memorandum

1 - Mr. W. W. Wannall  
 1 - Mr. R. E. Gebhardt  
 1 - Mr. W. W. Hamilton

Assoc. Dir. \_\_\_\_\_  
 Dep. AD Adm. \_\_\_\_\_  
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 Telephone Rm. \_\_\_\_\_  
 Director Sec'y \_\_\_\_\_

TO : Mr. W. R. Wannall

DATE: 4/16/74

FROM : Mr. F. S. Putman, Jr. 42

SUBJECT: DISPOSITION OF U. S. GOVERNMENT DOCUMENTS  
LAST IN THE POSSESSION OF EGIL KROGH, JR.

Reference is made to memorandum of the Attorney General to the Director dated 4/5/74 (attached) and initialed by Mr. Kelley wherein the Attorney General designated Deputy Attorney General Laurence H. Silberman, as the appropriate person in the Department to whom deliveries should be made of the documents last in the possession of Egil Krogh, Jr. These documents are now being maintained by WFO.

On 4/15/74 Special Agent William W. Hamilton telephonically contacted the office of Mr. Silberman and was advised that the Krogh documents are being handled by the office of Mr. James A. Wilderotter. Telephonic contact was then made with the office of Mr. Wilderotter and his secretary Miss Judy Willy instructed that the Krogh documents should be delivered to her office in Room 4208, Justice Building.

Supervisor Courtland Jones, WFO, was informed of the above on 4/15/74 and he advised that at 2:00 p.m. on this date he will deliver the Krogh documents to Mr. Wilderotter's office and will prepare an appropriate LHM concerning this transaction.

ACTION:

None. For information.

WWH:ldf  
 (4)

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Special Prosecution Force  
U. S. Department of Justice

Director, FBI

MCLEK

1 - Mr. R. E. Gebhardt

May 6, 1974

BY COURIER SERVICE

1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

UNITED STATES v. EHRLICHMAN, ET AL.,  
CASE NO. 74-116 -- INITIAL INTERVIEWS  
OF DR. LEWIS J. FIELDING BY BUREAU

Reference is made to your memorandum dated April 19, 1974, captioned as above, in which you requested certain material in order to prepare for trial.

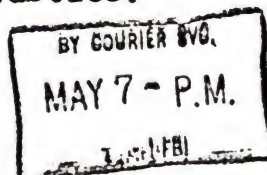
In response to your request, there are enclosed the items described below:

1. Xerox copy of a teletype from Director, FBI, to Special Agent in Charge (SAC), Los Angeles, dated July 9, 1971, instructing Los Angeles to ascertain the status of Daniel Ellsberg's analyst within the medical profession and, thereafter, to consider interview. Special Agent (SA) supervisory personnel within FBI Headquarters (FBIHQ) having knowledge of this communication were W. R. Wannall, J. R. Wagoner, E. R. Harrell (retired), D. E. Moore (retired), C. D. Brennan, A. J. Decker and S. B. Donahoe (retired). This communication was approved for transmittal by W. C. Sullivan. No dissemination was made of this communication outside of the FBI.

2. Xerox copy of a teletype dated July 12, 1971, to the Director, FBI, and the Boston, Chicago, New York, Philadelphia and Washington Field Offices from the Los Angeles Office, containing information relative to the medical license of Dr. Lewis J. Fielding, Daniel Ellsberg's analyst. Supervisory SA within FBIHQ having knowledge of this communication was J. R. Wagoner and the communication was disseminated with administrative data deleted to the Internal Security Division, Department of Justice.

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SEE NOTE PAGE FIVE

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Special Prosecution Force  
U. S. Department of Justice

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3. Xerox copy of a teletype from Director, FBI, to SAC, Los Angeles, dated July 19, 1971, wherein instructions are set forth to interview Dr. Lewis J. Fielding. SA supervisory personnel within FBIHQ having knowledge of this communication were W. R. Wannall, J. R. Wagoner, E. R. Harrell, D. E. Moore, C. D. Brennan, S. B. Donahoe, W. C. Sullivan, J. A. Mintz and D. J. Dalbey (retired). This communication was approved for transmittal by W. B. Soyars (retired) acting in behalf of then Associate Director Clyde Tolson. This communication was not disseminated outside of the FBI.

4. Xerox copy of a teletype dated July 20, 1971, to Director, FBI, and Boston, New York and Washington Field Offices from the Los Angeles Office, setting forth contact with Dr. Fielding. SA supervisory personnel within FBIHQ having knowledge of this communication were E. R. Harrell and A. B. Knickrehm. This communication was disseminated to Internal Security Division, Department of Justice, with administrative data deleted.

5. Xerox copy of an FD-302 concerning interview conducted July 20, 1971, of Dr. Lewis J. Fielding. Interview was conducted at Los Angeles, California, by SAs G. J. Moorehead and R. F. Kilcourse. This FD-302 was incorporated into a report submitted by the Los Angeles Office dated July 29, 1971. Supervisory SA within FBIHQ having knowledge of this report was E. R. Harrell. This report was disseminated to the Internal Security Division, Department of Justice and the Department of Defense.

6. Xerox copy of a teletype dated July 26, 1971, to Director, FBI, and Boston, Kansas City, San Juan, Chicago, New York and Washington Field Offices from the Los Angeles Office, setting forth contact with the Los Angeles Office by Dr. Fielding. SA supervisory personnel within FBIHQ having knowledge of this communication were E. R. Harrell, C. D. Brennan and J. R. Wagoner. This communication was disseminated to the Internal Security Division, Department of Justice, with administrative data deleted.



Special Prosecution Force  
U. S. Department of Justice

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7. Xerox copy of a teletype dated July 27, 1971, to Director, FBI, and Boston, New York and Washington Field Offices from the Los Angeles Office. This communication contains information concerning contact of the attorney of Dr. Lewis J. Fielding with our Los Angeles Office. SA supervisory personnel within FBIHQ having knowledge of this communication were J. R. Wagoner and J. R. Hagy. This communication was disseminated to Internal Security Division, Department of Justice, with administrative data deleted.

8. Xerox copy of an FD-302 pertaining to an interview of Harry Swerdlow, attorney for Dr. Fielding, on July 27, 1971, at Beverly Hills, California. Interview was conducted by SA W. L. McDermott of our Los Angeles Office and this FD-302 was incorporated into a report submitted by the Los Angeles Office dated August 11, 1971, which was disseminated to Internal Security Division, Department of Justice and the Department of Defense. Supervisory SA within FBIHQ having knowledge of this report was E. R. Harrell.

9. Xerox copy of a memorandum dated April 27, 1973, to Acting Director, FBI, from Department of Justice containing request for interview of Dr. Lewis J. Fielding. Attached to this communication is an intra-FBI informative note dated April 30, 1973. SA supervisory personnel within FBIHQ having knowledge of this communication were J. R. Wagoner, L. E. Belanger, F. S. Putman, Jr., E. S. Miller and W. G. Campbell. This communication was not disseminated outside of the FBI.

10. Xerox copy of a teletype dated April 30, 1973, from Acting Director, FBI, to SACs Los Angeles and Phoenix, containing instructions for interview of Dr. Lewis J. Fielding. SA supervisory personnel within FBIHQ having knowledge of this communication were E. S. Miller, R. E. Gebhardt, J. R. Wagoner, C. A. Nuzum, D. E. Moore, F. S. Putman, Jr., and L. E. Belanger. Approval to transmit this communication was given by W. G. Campbell, acting for then Acting Associate Director Mark Felt. This communication was not disseminated outside of the FBI.



**Special Prosecution Force  
U. S. Department of Justice**

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11. Xerox copy of a teletype dated May 1, 1973, to Acting Director, FBI, from the Los Angeles Office, setting forth contact with Irving Shimer, attorney for Dr. Fielding. Attached to this communication is an intra-FBI informative note dated May 2, 1973. SA supervisory personnel within FBIHQ having knowledge of this communication were W. R. Wannall, J. R. Wagoner, W. G. Campbell and J. R. Hagy. This communication was disseminated to Deputy Assistant Attorney General Kevin T. Maroney with the administrative data deleted.

Since the FBI does not know, in every instance, the identity of individuals in other Governmental agencies having access to disseminated material cited above, it is respectfully suggested that you may wish to query those agencies as to the identity of individuals who had access to the above FBI material. There is no information in FBI files which would identify any individual within or outside of the FBI who was informed verbally of FBI contacts with Dr. Fielding.

Item three of referenced memorandum set forth your request for a report on the authorization to interview Dr. Fielding, which was to include interviews of W. B. Soyars, Clyde Tolson and identification and interviews of all others who suggested, requested, approved or authorized the Fielding interview. This request is being handled separately and results will be promptly submitted to your office.

Enclosures (11)



**Special Prosecution Force  
U. S. Department of Justice**

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NOTE:

WSPF, by memorandum dated 4/19/74, has requested copies of Bureau documents pertaining to contacts by the Bureau with Dr. Lewis J. Fielding, analyst of Daniel Ellsberg. WSPF also desired to know the identities of all the persons, departments or agencies, either within or outside the Bureau, who received copies of memoranda reflecting the Fielding contacts or were informed of said contacts verbally. Copies of Bureau documents described above are being furnished in compliance with this request and FBI supervisory Agent personnel whose initials appear on these documents are being identified to WSPF as persons within the Bureau having knowledge of the Fielding contacts. Of course, we cannot identify for WSPF those individuals either within or without the Bureau who were informed verbally of Bureau contacts with Fielding and WSPF being so advised. Portion of WSPF memorandum which requested interviews of former Assistant Director Soyars and Associate Director Tison is being handled separately and memorandum requesting authority for such interviews being prepared separately.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DANIEL ELLSBERG, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

FILED OCT 17 1973

JAMES F. DAVEY  
CLERK

Civil Action No. 1879-72

DEFENDANTS' SECOND OPPOSITION  
TO PLAINTIFFS' MOTION TO  
COMPEL ANSWERS TO INTERROGATORIES

Statement

1. This action was instituted by the plaintiffs herein seeking monetary damages, and asserting a violation of their constitutional rights under the First, Fourth and Sixth Amendments to the Constitution; their statutory rights under 28 U.S.C. § 2520 and 47 U.S.C. § 605 and seeking to invoke the jurisdiction of this Court under 28 U.S.C. § 1331(a).<sup>1/</sup> The facts upon which this action was originally grounded arose out of the companion criminal case United States v. Anthony Joseph Russo and Daniel Ellsberg, No. 9373-CD-WMB (C.D. Cal.) in which two of the plaintiffs herein, Ellsberg and Russo, were indicted on charges of misappropriation of Government property, improper disclosure of defense information, and conspiracy in violation of 18 U.S.C. 641, 793 and 371.<sup>2/</sup> In

<sup>1/</sup>By stipulation of counsel filed June 13, 1973, this action was dismissed as to plaintiff Morton H. Halperin, without prejudice.

<sup>2/</sup>This indictment was subsequently dismissed by the district court on May 11, 1973.

*Trial does*



that suit the Government disclosed, pursuant to the Court's order, that while there had been no surveillance or incidental overhears of the defendants or their premises by the Government, there had been two incidental overhears of conversations involving the defendants' consultants or attorneys during the period they were assisting or representing the defendants.

Following this disclosure by the Government, the plaintiffs herein instituted the present action on September 19, 1972, alleging that ". . . wire and oral communications of the plaintiffs other than Ellsberg and Russo have been overheard by means of unwarranted electronic surveillance and interceptions by the defendants from June 19, 1968 to the date of this complaint, and that such overheard conversations included matters relevant to the defense of Ellsberg and Russo," (Comp. ¶7) and were in violation of plaintiffs' statutory and constitutional rights. (Comp. ¶8). The plaintiffs further alleged that ". . . [s]uch surveillance also constituted a violation of the rights of plaintiffs Ellsberg and Russo to the effective assistance of counsel guaranteed by the Sixth Amendment, and the rights of the other plaintiffs to freedom of speech guaranteed by the First Amendment." (Comp. ¶9).

At the same time the plaintiffs filed their Complaint they propounded interrogatories to the defendants inquiring as to whether any of the defendants had ". . . since June 19, 1968, authorized, procured, conducted, or received any electronic surveillance or other overhearing of wire or oral conversations made by or to any of the [plaintiffs other than Ellsberg and Russo]." (Pls. Int. No. 1). In response to



these interrogatories, the defendants interposed their objections, asserting in effect, that the electronic surveillances upon which this action was predicated--the two incidental overhears of conversations involving plaintiffs Ellsberg and Russo's attorneys or consultants in the companion criminal case--were authorized by the President, acting through the Attorney General, to obtain foreign intelligence information deemed essential to the security of the United States, and were therefore lawful and not violative of plaintiffs' constitutional or statutory rights. (Def. Obj. No. 1). The defendants further asserted that such lawful surveillances did not confer standing upon the plaintiffs to inquire into the matters set forth in their interrogatories propounded to the defendants. (Def. Obj. No. 2).

In support of their objections, and in opposition to the plaintiffs' motion for an order compelling the defendants to provide answers to their interrogatories, the defendants submitted to this Court for its in camera review the logs of and the authorizations for the surveillances in question, and urged the Court to make an in camera determination as to the lawfulness of such surveillance. Following full briefing and argument on this issue, this Court entered an order on August 2, 1973, finding inter alia that the surveillances in question were authorized by the Executive for foreign intelligence gathering purposes, deemed essential to the national security, and thus were lawful, and not violative of the plaintiffs' constitutional and statutory rights. (Order of August 2, 1973 at 2). The Court further found that as the



"... plaintiffs [had] not alleged any facts or circumstances, apart from the two overhearings aforesaid, which would give them standing or otherwise entitle them to discovery with respect to any electronic surveillance of them from the period June 19, 1968 to date, . . . their motion for an order compelling the defendants to answer interrogatories should be denied . . . ." (Ibid.)

2. Apart from the above determination by this Court as to the lawfulness of the two earlier overhears of consultants or attorneys in the companion criminal case, plaintiffs filed an amended complaint on June 19, 1973, alleging that "... wire and oral communications of each of the plaintiffs [including Ellsberg] have been overheard by means of unwarranted electronic surveillance and interception by the defendants from June 19, 1968 to the date of this complaint . . . ."

(Amend. Comp. ¶1). The defendants responded to this allegation on June 29, 1973, by admitting "... that the conversations of plaintiff Daniel Ellsberg were incidentally overheard on a national security electronic surveillance conducted by the Federal Bureau of Investigation on the telephone located at the residence of Dr. Morton Halperin, 8215 Stone Trail Drive, Bethesda, Maryland" (Ans. to Amend. Comp. ¶1) but denying "... that the conversations of any other present plaintiff were, at any time, overheard as a result of such coverage of the telephone located at the Halperin residence." Ibid.

Thereafter, on August 8, 1973, the plaintiffs propounded further interrogatories to the defendants inquiring as to



whether the defendants had ". . . since June 19, 1968, authorized, procured, conducted or received any electronic surveillance or other overhearing of wire or oral communications made by or to [plaintiffs Ellsberg or Russo]" (Further Int. ¶1) and if so, the date, subject, location and method of such surveillance and the defendants' authorization for such actions. (Id. at ¶2). The plaintiffs also sought the names of the persons who participated in such surveillance, as well as the name of the custodian of the logs and the authorizations for such surveillance. (Ibid.) The defendants interposed their objections to such discovery and asserted that "[t]he national security surveillance of the . . . telephone installation of Dr. Halperin at 8215 Stone Trail Drive was authorized by the President of the United States, acting through the Attorney General, in the exercise of his authority relating to the Nation's foreign affairs, and was conducted for foreign policy purposes and was deemed necessary to protect national security information against foreign intelligence activities and as such was lawful and not violative of any provision of the Constitution of the United States or the provisions of any Federal statute . . . [and] [p]laintiff Ellsberg is therefore not entitled to any discovery in support of his action which is grounded solely upon a lawful electronic surveillance" (Def. Obj. to Further Dis. ¶1).<sup>3/</sup>

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<sup>3/</sup>The defendants further asserted that as plaintiff Russo had not been overheard on the surveillance of Dr. Halperin and had not alleged any other facts or circumstances which would give him standing or otherwise entitle him to discovery with respect to any electronic surveillance of himself for the period June 19, 1968 to date, he was not entitled to any discovery in support of his action under the rule of the Order of (Footnote continued on following page)



The plaintiffs now seek an order from this Court, pursuant to Rule 37, Federal Rules of Civil Procedure, compelling the defendants to provide answers to the further interrogatories propounded to them.

#### ARGUMENT

In response to the plaintiffs' motion to compel answers to their further interrogatories, the defendants herein have submitted to this Court for its in camera inspection the request and authorization for the telephone surveillance of Dr. Morton H. Halperin, over which plaintiff Ellsberg was incidentally overheard, and the affidavit of Dr. Henry A. Kissinger setting forth the facts and circumstances necessitating this surveillance. And, based upon this in camera submission, the defendants assert that (1) the surveillance of Dr. Halperin's home telephone was conducted for foreign policy purposes to protect national security information against foreign intelligence activities, and as such was lawful and not violative of the constitutional or statutory rights of the subject or of the plaintiff Ellsberg, by virtue of his incidental overhear on that surveillance, and (2) that such lawful surveillance does not provide plaintiff Ellsberg or the other plaintiffs in this action with sufficient

Footnote continued from preceding page

3/this Court of August 2, 1973. (Def. Obj. to Further Dis. ¶2). The defendants also asserted that under the rule of the Order of this Court entered on August 2, 1973, none of the plaintiffs in this action have standing to seek any discovery in this suit--except plaintiff Ellsberg whose standing is the subject of the present motion. (Def. Obj. to Further Dis. ¶3).



standing to compel the discovery of the defendants sought herein.<sup>4/</sup>

I.

The Electronic Surveillance of Dr. Morton H. Halperin  
Was Lawful--And Thus Not Violative Of Plaintiff  
Ellsberg's Constitutional Or Statutory Rights--In  
That It Was Conducted For Foreign Policy Purposes  
And Was Necessary To Protect National Security  
Information Against Foreign Intelligence Activities

The lawfulness of the surveillance of Dr. Morton H.

Halperin can best be assessed by first briefly considering the facts and circumstances which existed during the time of the surveillance, and which, by their compelling nature, rendered its use both reasonable and appropriate.

<sup>4/</sup>This Court may properly determine the lawfulness of the electronic surveillance of Dr. Halperin--over which plaintiff Ellsberg was incidentally overheard--upon an ex parte, in camera examination of the authorization for such surveillance and the affidavit of Dr. Henry A. Kissinger. As Mr. Justice Stewart stated in his concurring opinion in Giordano v. United States, 394 U.S. 310, 313 (1969), in determining whether the surveillance in question did violate the Fourth Amendment ". . . we did not in Alderman, Butenko, or Ivanov and we do not today, specify the procedure that the District Courts are to follow in making this preliminary determination. We have nowhere indicated that this determination cannot appropriately be made in ex parte, in camera proceedings. Nothing in Alderman v. United States, Ivanov v. United States or Butenko v. United States ante, p. 165, requires an adversary proceeding and full disclosure for resolution of every issue raised by an electronic surveillance. Taglianetti v. United States, post, p. 316." Moreover, as this Court observed in United States v. Hoffman, 334 F. Supp. 504, 516 (D.D.C. 1971), "[u]pon examination, in camera, of the documents submitted in the sealed exhibit, the Court deems it appropriate to make the required preliminary determination of whether any of the conversations of the defendant were overheard in violation of his Fourth Amendment rights. An evidentiary hearing is not required to make that determination." Accord, United States v. Clay, 430 F.2d 165 (5th Cir. 1970); United States v. Brown, 317 F. Supp. 531 (E.D. La. 1970).



A.

The Facts and Circumstances Necessitating  
The Surveillance Of Dr. Halperin

1. The early months of 1969 were particularly sensitive times with regard to the formulation of this country's foreign policies and the establishment of our future relations with other nations. During this period, policies were being considered which would establish this country's fundamental approach to major foreign policy issues such as the United States' strategic posture, Strategic Arms Limitation Talks (SALT), Vietnam and many other national security issues. Because of the sensitive nature of these matters, the secrecy of each was of vital importance, and the success or failure of each program turned in many instances upon the maintenance of the necessary security. However, notwithstanding the critical need for such security during this period, the Government was confronted with leaks to the press of documents which were considered of the greatest importance to the national security. These included discussions of National Security Council deliberations, intelligence information, negotiating positions and specific military operations. In several cases, significant consequences resulted from these premature releases of internal policy deliberations as well as the obvious benefit the release of such classified information had for potential enemies of this country.



2. In early May, 1969, after several such unauthorized disclosures of classified information had occurred, the President consulted with the then Director of the Federal Bureau of Investigation, J. Edgar Hoover and the then Attorney General, John N. Mitchell concerning methods to be employed to deal with this problem. And as a result of that meeting, a decision was reached by the President to utilize electronic telephone surveillances to seek to determine the source or sources of such disclosures. Since in most cases access to the classified information which had been disclosed to the press was limited to a few officials and employees within the Government, Dr. Henry A. Kissinger, then Special Assistant to the President for National Security Affairs was directed by the President to provide the Federal Bureau of Investigation with the names of certain individuals who had such access. One of the names provided to the Federal Bureau of Investigation by Dr. Kissinger's office was that of Dr. Morton H. Halperin, then a member of the National Security Council staff.<sup>5/</sup>

3. On May 12, 1969, a request for authorization to institute an electronic surveillance on the home telephone of

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<sup>5/</sup>Dr. Halperin's name was provided to the Federal Bureau of Investigation primarily because of his extensive exposure to classified information. As Chief of the National Security Council Planning Group, Dr. Halperin was a key figure in the organization, substantive preparation and processing of National Security Council policy reviews, and the broad scope of his assignments involved him in nearly all the fundamental policy issues during the formative and crucial early months of 1969. Dr. Halperin served on the staff of the National Security Council until September 20, 1969, and continued as a consultant to the National Security Council until May 12, 1970.



Dr. Halperin, located at 8215 Stone Trail Drive, Bethesda, Maryland, was transmitted from Mr. Hoover to the then Attorney General, John N. Mitchell, and approval for the surveillance was granted the same day. The electronic surveillance of Dr. Halperin's home telephone also commenced on that day.

However, notwithstanding this and other investigations being conducted by the Federal Bureau of Investigation, and additional governmental efforts to curb the unauthorized disclosure of classified information, press leaks involving the most sensitive of foreign policy matters continued through 1969, 1970 and 1971, and the surveillance of Dr. Halperin was thus continued throughout this period. In early 1971, however, a decision was reached that the surveillance of Dr. Halperin and others was no longer proving sufficiently helpful to justify their continuation, and on February 10, 1971 the electronic surveillance of Dr. Halperin was discontinued.



The Surveillance of Dr. Halperin Was Not  
Violative of His Fourth Amendment Rights  
Or The Constitutional Rights Of  
Plaintiff Ellsberg Who Was Incidentally  
Overheard On Such Surveillance

Against this background of facts and circumstances existing during the time of the surveillance of Dr. Halperin, the central question presented by the plaintiffs' present motion is whether the electronic surveillance of Dr. Halperin--over which plaintiff Ellsberg was overheard--which was conducted by the Executive for foreign policy purposes and for the protection of national security information against foreign intelligence activities was and is lawful, and not violative of the Fourth Amendment.<sup>7/</sup> We believe, for the reasons we will discuss, that such actions were and are lawful.

1. In seeking to explore the authority of the President to conduct the electronic surveillance over which plaintiff Ellsberg was overheard, the relevant inquiry must center upon what constraints the Constitution, under the Fourth Amendment,

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<sup>7/</sup>It would appear that it was the intention of the Supreme Court in United States v. United States District Court, 407 U.S. 297 (1972) to specifically reserve this question. In that decision the Court observed that "[i]t is important at the outset to emphasize the limited nature of the question before the Court. \* \* \* [T]he instant case requires no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers, within or without this country, [for] \* \* \* [t]here is no evidence of any involvement, directly or indirectly, from a foreign power." Id. at 303-309. And in its conclusion, the Court reiterated the scope of its decision by stating that "[a]s stated at the outset, this case involves only the domestic aspect of national security. We have not addressed, and express no opinion as to, the issue which may be involved with respect to activities of foreign powers or their agents." Id. at 321-322.



imposes upon such exercise of authority by the Executive. Or stated differently, was the warrantless electronic surveillance conducted herein permissible, within the meaning of the Fourth Amendment, where it was specifically authorized by the President, acting through the Attorney General, in the exercise of his authority relating to the conduct of foreign affairs and was deemed essential for the protection of national security information.

The resolution of this inquiry as to the propriety of the Executive's actions taken for foreign policy purposes, can only be judged by first viewing these actions: (1) in terms of the constitutional duties and authority of the President for the conduct of the Nation's foreign affairs, and (2) in light of the practices of past Presidents in fulfilling their constitutional responsibility for the protection of the national security.

Since the time this Nation was founded, courts have recognized that the President, as Chief Executive, possesses certain powers which are not dependent upon a specific legislative grant of authority from the Congress but derive from the Constitution itself.<sup>8/</sup> As the Court stated in Marbury v. Madison, 1 Cranch (5 U.S.) 137, 165-166 (1803):

By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience.

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<sup>8/</sup>See, e.g., Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 37 U.S. 103, 100 (1940); United States v. Curtiss-Wright Corp., 299 U.S. 304, 319-320 (1936); Cafeteria Workers v. McElroy, 367 U.S. 886, 890 (1961); In re Debs, 158 U.S. 564 (1895).



Later, the Supreme Court in United States v. Belmont, 301 U.S. 324, 328 (1937), recognized the existence and extent of one of the President's powers, when it held that "the conduct of foreign relations was committed by the Constitution to the political departments of the government, and the propriety of what may be done in the exercise of this power [is] not subject to judicial inquiry or decision."<sup>9/</sup>

Similarly, the President, in his dual role as Commander-in-Chief of the Armed Forces and Chief Executive possesses still another serious power and responsibility--that of safeguarding the security of the Nation against foreign aggression.

In fulfilling these responsibilities, the President must, of course, exercise an informed judgment. This in turn implies both the power and the duty to utilize all of the investigative resources at his disposal to guide his conduct of foreign affairs and to ensure the protection of the national security. See, e.g., Totten v. United States, 92 U.S. 105 (1875).

Because in recent years the growing complexity and sophistication of modern society has added to the recognition that more sophisticated techniques were required for protecting the national security, Presidents of the United States, for over thirty years, have recognized the need for, and utilized, warrantless electronic surveillance, when necessary, where the national security was involved. See generally, Rogers, The Case for Wiretapping, 63 Yale L.J. 792, 795-796 (1954); Brownell, The Public Security and Wiretapping, 39 Cornell L.J. 195, 199 (1954). Thus, it is against this background of

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<sup>9/</sup>See also, Oetion v. Central Leather Co., 246 U.S. 297 (1918); United States v. Fink, 315 U.S. 203 (1942).



powers and practices of the President in the conduct of foreign affairs that the current actions of the Executive in conducting electronic surveillances for the protection of national security information must be judged under the safeguards of the Fourth Amendment.

2. Any discussion of the constraints of the Fourth Amendment must begin with the proposition that the Fourth Amendment does not prohibit all warrantless searches and seizures, for there is no constitutional requirement that there must always be judicial authorization before a search or seizure can be made.<sup>10/</sup> Nor does it prohibit all searches and seizures where the traditional requirement of "probable cause" does not exist. See Camara v. Municipal Court, 387 U.S. 523 (1967). But rather, "... the central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Terry v. Ohio, *supra*, at 19. See also, Elkins v. United States, 364 U.S. 206, 222 (1960). For as the Court observed in Cady v. Dombrowski, 41 U.S.L.W. 4995, 4996, (U.S. June 21, 1973), "[t]he ultimate standard set forth in the Fourth Amendment is reasonableness." Therefore,

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<sup>10/</sup>See e.g., Carroll v. United States, 267 U.S. 132 (1925); McDonald v. United States, 335 U.S. 451 (1948); Brinegar v. United States, 338 U.S. 160 (1940); Cooper v. California, 386 U.S. 58 (1967); Warden v. Hayden, 387 U.S. 294 (1967); Chimel v. California, 395 U.S. 752 (1969); Terry v. Ohio, 392 U.S. 1 (1968). The seizure of contraband goods under civil process is not subject to the warrant requirement of the Fourth Amendment. Boyd v. United States, 116 U.S. 616, 623-624 (1886); Murray's Lessees v. Hoboken Land and Improvement Co., 18 How. (59 U.S.) 272, 285 (1855). Nor is it required that every search that yields evidence of criminal conduct be supported by a prior warrant. Abel v. United States, 362 U.S. 217 (1960).



by its terms, the Fourth Amendment does not mandate a rigid standard by which governmental actions are to be judged in terms of absolutes, but instead requires the application of a rule of flexibility in which the Court must "... examine [the then competing circumstances] and balance the basic values at stake. . . ." United States v. United States District Court, supra, at 314.

3. In the present action, the conduct to be weighed by the constraints of the Fourth Amendment is that of the Executive in conducting electronic surveillances for the protection of national security information, and the competing value to be considered in light of such conduct is, of course, the right of individuals "... to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." While the plaintiffs will, no doubt, make the argument that the rights of the individual must be superior to the needs of the Executive, this conclusion, we believe, fails to consider fully the requirements in general of the Executive to fulfill the fundamental duties placed upon him by the Constitution for the conduct of the Nation's foreign affairs and for the protection of the national security, and those needs in particular which necessitated the conduct of the electronic surveillance which was instituted in the present case. Therefore, to balance squarely the competing interest presented by this litigation, full consideration must be given to those circumstances and events which, in this case, precipitated the telephone surveillance of Dr. Halperin, over which plaintiff Ellsberg was overheard.



Looking to the events and circumstances, discussed in Part.A, supra, which existed at the time of the electronic surveillance of Dr. Halperin, the facts demonstrate that during this period substantial disclosures of classified and highly sensitive governmental information were occurring on a continuing basis, and daily news accounts setting forth in detail facts relating to such disclosures were appearing regularly in the national press.

The immediate results of such disclosures were threefold. First, the disclosures created a severe difficulty for the President in seeking to make foreign policy decisions based upon full and frank discussions among all his advisors within the Government, for few if any discussions or recommendations made to the Executive appeared truly protected from the possibility of subsequent disclosure in the news media. Secondly, in each of these areas of concern, serious adverse consequences were precipitated on many occasions by the untimely and premature disclosure in the press of confidential foreign policy deliberations. Last, and no doubt the most detrimental, was the obvious benefit the disclosure of such information provided the potential enemies of our country, who, for the price of a daily newspaper, could become privy to the innermost deliberations of the Executive, and without the necessity for resorting to covert intelligence gathering activities, obtain some of the most restricted and highly classified information within the Government. 11/

11/The actions of an agent in obtaining restricted information from the news media and transmitting it to some foreign power for subsequent use against this country, is clearly a "foreign intelligence activit[y]" within the meaning of 18 U.S.C. § 2511(2) as surely as if the same information had been obtained by this agent through direct covert intelligence activities.



It was thus upon these facts that the decision was made by the Executive in early May to institute electronic surveillances to locate the source or sources of such unauthorized disclosures, and upon the principal criteria of access to such information, that the surveillance was instituted upon Dr. Halperin.

In considering the reasonableness of this action by the Executive--conducting electronic surveillances for "the protection of national security information against foreign intelligence activities"--which by its nature presents a question of first impression, it is instructive to consider the findings of other appellate and district courts which have considered the parallel question as to the reasonableness of warrantless electronic surveillances conducted by the Executive for "foreign intelligence gathering" purposes. In one of the first decisions to consider and uphold the lawfulness of such surveillances by the Executive, the Court in United States v. Clay, 430 F. 2d 165, 172 (5th Cir. 1970), reversed on other grounds, 403 U.S. 698 (1971), stated that "[n]o one would seriously doubt in this time of serious international insecurity and peril that there is an imperative necessity for obtaining foreign intelligence information, and we do not believe such gathering is forbidden by the Constitution. . . ." And in their most recent decision on this subject--which reflects the conclusion of all courts which, to date, have considered this question--the Court of Appeals for the Fifth Circuit observed in United States v.



Brown, No. 72-2181 (5th Cir. August 22, 1973) that ". . . because of the President's constitutional duty to act for the United States in the field of foreign relations, and his inherent power to protect national security in the context of foreign affairs, we reaffirm what we held in United States v. Clay, supra, that the President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence. (Slip Op. at 16). Accord, United States v. Butenko and Ivanov, 318 F. Supp. 66 (D. N.J. 1970) rev'd on other grounds, No. 72-1741 (3rd Cir. June 21, 1973); United States v. Enten, Criminal Case No. 166-71 (D.D.C. aff'd. on different grounds in part and vacated in part, No. 71-1774 (D.C. Cir. June 29, 1973); United States v. Brown, 317 F. Supp. 531 (E.D. La. 1970).

Thus, the determination of reasonableness in the actions of the Executive in the conduct of warrantless electronic surveillances for "foreign intelligence gathering" purposes would appear to dictate the conclusion as to the reasonableness of his actions in seeking "to protect national security information against foreign intelligence activities," for in conducting the latter, as with the former, the need for such activity is no less compelling, and the rationale for the recognition of such authority no less applicable.

Moreover, the absence of a distinction between all electronic surveillances conducted by the Executive in conjunction with his constitutional authority for the conduct of foreign affairs and for the protection of the national



security is reinforced by the recent decision of this Court in Zweibon v. Mitchell, No. 2025-71 (D.D.C. July 20, 1973). There, in upholding a warrantless electronic surveillance by the Executive of a domestic organization whose continued activities threatened the relations between this country and the Soviet Union, this Court observed, in taking a broad overview of "foreign" national security surveillances, that "[n]o prior authorization from a court is necessary where, as in this case, electronic surveillances relate to the foreign aspects of our national security." (Slip Op. at 13). The Court further observed that "[t]he electronic surveillances were installed in this case under the constitutional authority of the President over the conduct of foreign relations and his inherent power to protect our national security. Based upon the facts of this case the surveillances, without prior judicial authorization, were reasonable within the meaning of the Fourth Amendment, and were therefore lawful." Ibid.

4. Thus, upon the authorities cited, it is abundantly clear that the conduct of electronic surveillances by the Executive "to protect national security information against foreign intelligence activities" was and is not "unreasonable" within the meaning of the Fourth Amendment. Nor was it "unreasonable" to utilize such authority in conducting an electronic surveillance of the home telephone of Dr. Halperin --over which plaintiff Ellsberg was overheard--where its purpose was to attempt to locate the source or sources of unauthorized disclosures of classified information which impaired the ability of the President to conduct foreign affairs and prejudiced the national security. And it there-



fore, follows that such surveillance was not violative of the Fourth Amendment rights of Dr. Halperin, the subject of the surveillance, or of the rights of plaintiff Ellsberg who was incidentally overheard thereon.

C.

National Security Surveillances Authorized  
By The Executive Are Not Violative Of Title  
III Of The Omnibus Crime Control And Safe  
Streets Act, 18 U.S.C. §§ 2510-2520

Similarly, the statutory rights of plaintiff Ellsberg under Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520 were not violated by the incidental overhear of his conversations on the national security electronic surveillance of Dr. Halperin in that such surveillance was conducted by the Executive for the protection of national security information against foreign intelligence activities.

1. Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. §§ 2510-2520, authorizes the use of electronic surveillance for classes of crimes set forth in Section 2516 and further establishes in Section 2511 prohibitions and penalties for violations of the provisions of this Act. Specified within this Section, however, are five categories of conduct which are either not unlawful or not regulated under the Act's restrictions. The first four such categories stated in Section 2511(2)(a-d) set forth specified classes of interception and conduct which "shall not be unlawful under this chapter." The fifth category, however, unlike the preceding four which provide exceptions to the Act's coverage, enunciates a class of



- conduct which is not to be regulated by the penalties and prohibitions set forth in the Act. Specifically, the provision provides, as set forth in Section 2511(3), that:

Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. § 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. . . .

Thus, through this provision, Congress has by its terms disavowed any attempt to legislate either affirmatively or negatively with regard to the national security powers of the President, and specifically to legislate with regard to the authority of the Executive to conduct electronic surveillance pursuant to his national security powers. The intent of the Congress in carving out of the statute's coverage a class of conduct which would not be regulated by the Act's prohibitions is best demonstrated by the colloquy on the Senate floor between Senators Hart, Holland and McClellan regarding Section 2511(3).



"Mr. Holland . . . The section [2511(3)] from which the Senator [Hart] has read does not affirmatively give any power . . . We are not affirmatively conferring any power upon the President. We are simply saying that nothing herein shall limit such power as the President has under the Constitution . . . We certainly do not grant him a thing.

"There is nothing affirmative in this statement.

"Mr. McClellan. Mr. President, we make it understood that we are not trying to take anything away from him.

"Mr. Holland. The Senator is correct.

"Mr. Hart. Mr. President, there is no intention here to expand by this language a constitutional power. Clearly we could not do so.

"Mr. Hart . . . However, we are agreed that this language should not be regarded as intending to grant any authority, including authority to put a bug on, that the President does not have now.

"In addition, Mr. President as I think our exchange makes clear, nothing in Section 2511(3) even attempts to define the limits of the President's national security power under present law which I have always found extremely vague . . . Section 2511(3) merely says that if the President has such a power, then its exercise is in no way affected by Title III." (Emphasis supplied) 114 Cong. Rec. 14751 (May 23, 1968) 12/

It is therefore apparent from this discussion of Section 2511(3), that as Senator Hart's conclusion denotes, whatever powers the Executive possesses to conduct electronic surveil-

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12/Moreover, as is reflected in the Senate Report accompanying this legislation, "[Section 2511(3)] is intended to reflect a distinction between the administration of domestic criminal legislation not constituting a danger to the structure or existence of the Government. Where foreign affairs and internal security are involved, the proposed system of court ordered electronic surveillance envisioned for the administration of domestic criminal legislation is not intended necessarily to be applicable." S. Rep. No. 1097, 90th Cong., 2d Sess. 94 (1968).



lance, ". . . its exercise is in no way affected by Title III." (Ibid.)

2. The Supreme Court in its analysis of the legislative history of Section 2511(3) in United States v. United States District Court, supra, reached the same conclusion as that stated above as to the inapplicability of the Act's coverage to the conduct of national security electronic surveillance by the Executive. Specifically, the Court concluded in its discussion of this provision that while Section 2511(3) constitutes ". . . an implicit recognition that the President does have certain powers in the specified areas" (407 U.S. at 303) \* \* \* "[w]e . . . think the conclusion inescapable that Congress only intended to make clear that the Act simply did not legislate with respect to national security surveillances." Id. at 306.

The conclusion enunciated by the Supreme Court was earlier reached by the Court in United States v. Smith, 321 F. Supp. 424 (C.D. Cal. 1971), in its determination as to the scope of the Act's coverage. There, the Court observed that:

The major thrust of the relevant portion of this Act makes electronic eavesdropping a federal crime punishable by a fine of \$10,000, or imprisonment of up to five years, or both. However, there are certain exceptions, and under these limited circumstances electronic eavesdropping is not a federal crime. The portion quoted above [18 U.S.C. 2511(3)] provides for one of these exceptions. Thus, the President does not commit a crime under this statute when he authorizes electronic surveil-



II.

The Plaintiffs Are Not  
Entitled To Any Discovery  
In The Present Action

The plaintiffs in the present action are not entitled to the discovery they are presently seeking as to whether the defendants have ". . . since June 19, 1968 authorized, procured, conducted or received any electronic surveillance or other overhearing of wire or oral communications made by or to [plaintiffs Ellsberg and Russo]" (Further Int. ¶1) and if so, the date, subject, location and method of such surveillance and the defendants' authorization for such actions. (Id. at ¶2). Nor are the plaintiffs entitled to any discovery in this action.

This Court stated in its Order of August 2, 1973, that the ". . . plaintiffs have not alleged any facts or circumstances . . . which would give them standing or otherwise entitle them to discovery with respect to any electronic surveillance of them for the period June 19, 1968 to date" (Slip Op. at 2) and this finding constitutes the law of this case--as to all plaintiffs except Daniel Ellsberg.

The only issue not addressed by the Court in its Order of August 2, 1973, and which is now before this Court on the plaintiffs' present motion, is the assertion, in effect, that plaintiff Ellsberg has standing to seek discovery in the present action by virtue of the admission by the defendants that he had been incidentally overheard on the national security surveillance of Dr. Morton H. Halperin. We cannot agree with this contention.



Whatever standing plaintiff Ellsberg might have under Rule 26(b), Federal Rules of Civil Procedure, for seeking discovery "relevant to the subject matter" of an action for illegal electronic surveillance, he no longer has such standing in the present action in its current posture. Irrespective of the privileged nature of the information sought, the defendants, through the submission of the authorization for the surveillance of Dr. Halperin and the affidavit of Dr. Kissinger, for the Court's in camera inspection, and through their demonstration of the lawfulness of this surveillance, have now obviated both the necessity and the propriety of the discovery plaintiff is seeking. As the district court observed in the context of the "foreign" national security surveillances conducted in United States v. Butenko, supra at 72, "[i]n sum, the Court concludes that the challenged surveillances were lawful and not in violation of any [constitutional] rights. . . . Therefore no disclosure need be made." See also Giordano v. United States, supra at 313; United States v. Clay, supra at 171.

So it is in the context of the present civil action. For as the Court stated in Alamo Theatre Company v. Loew's Incorporated, 22 F.R.D. 42, 45 (N.D. Ill. 1958) "[t]he power to grant discovery should be exercised within reasonable limits and a prime essential to the allowance of discovery is that it be in aid of a known case." In the present action, where the only remaining basis for the discovery plaintiff Ellsberg is now seeking is the demonstrably lawful surveillance of Dr. Halperin--over which he was incidentally overheard--such con-



duct does not provide the necessary standing to compel any discovery in this action. "[Before the plaintiff can be] . . . granted sweeping discovery [he] must somehow convince the Court that there is, at least, reasonable ground to believe that a cause of action exists, and can be proved if the necessary facilities are afforded him." C.F. Simonin's Sons, Inc. v. American Can Co., 30 F. Supp. 901, 902 (E.D. Pa. 1939). No such showing has or can be made in this litigation.

#### CONCLUSION

For the foregoing reasons, plaintiffs' motion to compel defendants to answer further interrogatories should be denied.

Respectfully submitted,

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18 U.S.C. 371 . . . . .	1
641 . . . . .	1
793 . . . . .	1
2510 . . . . .	1,20
2511 . . . . .	1,20
2511(2) (a-d) . . . . .	1,20
2511(3) . . . . .	16,20,21 22,23,24
2516 . . . . .	1,20
2520 . . . . .	1,20,24
28 U.S.C. 1331(a) . . . . .	1
47 U.S.C. 605 . . . . .	1,24
Congressional Material:	
Title III of the Omnibus Crime Control and Safe Streets Act of 1968 . . . . .	20,24
Section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. § 605) . . . . .	24
114 Cong. Rec. 14751 (May 23, 1968) . . . . .	22
S. Rep. No. 1097, 90th Cong., 2d Sess. 94 (1968) . . . . .	22
Federal Rules of Civil Procedure:	
Rule 26(b) . . . . .	26
Rule 37 . . . . .	6




CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing DEFENDANTS' SECOND OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL ANSWERS TO INTERROGATORIES upon all parties by mailing a copy thereof, postage prepaid, to the following counsel of record.

David Rein, Esquire  
Forer and Rein  
430 National Press Building  
Washington, D. C. 20004

OCT 17 1973

\_\_\_\_\_  
Date

  
EDWARD S. CHRISTENBURY  
Attorney, Department of Justice  
Washington, D. C. 20530  
Phone: 202/739-2361

Attorney for Defendant Mitchell  
in his official capacity as  
former Attorney General of the  
United States and for Defendants  
Kleindienst, Gray, Ingersoll,  
Acree, Rowley, Walters, Rogers,  
Laird and Helms.



## Memorandum


TO : Mr. W. R. Wannall *Wannall*FROM : F. S. Putman, Jr. *FSP*SUBJECT: UNITED STATES v. EHRLICHMAN, ET AL.,  
CASE NO. 74-116 -- INITIAL INTERVIEWS  
OF DR. LEWIS J. FIELDING BY BUREAU1 - Mr. E. I. Walsh  
1 - Mr. J. A. Mintz  
1 - Mr. R. E. Gebhardt  
DATE: 5/3/74  
1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

Assoc. Dir.	_____
Dep. AD Adm.	_____
Dep. AD Inv.	✓
Asst. Dir.:	_____
Adm.	_____
Comp. Syst.	_____
Ext. Affairs	_____
Files & Com.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Plan. & Eval.	_____
Spec. Inv.	_____
Training	_____
Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

*1116*  
Purpose is to request authority to interview certain FBIHQ personnel relative to their knowledge of Bureau interview of Dr. Lewis J. Fielding. It is noted that Dr. Fielding was the analyst of Daniel Ellsberg whose office was burglarized on or about 9/3/71 by The White House "plumbers."

Watergate Special Prosecution Force (WSPF), by memorandum dated 4/19/74, submitted certain requests to the Bureau in order to prepare for captioned trial. These requests included the following: (copy attached)

"A full report on the authorization to interview Fielding, including interviews of SA Soyars, Clyde Tolson, and identification and interviews of all others who suggested, requested, approved or authorized the Fielding interview. We would like to know the reasons each individual identified thought the interview to be necessary or appropriate, whether any of the individual discussed Dr. Fielding with anyone outside the Bureau, whether anyone outside the Bureau requested or suggested a Fielding interview and so on."

During the investigation of Daniel Ellsberg information was developed 

Enclosure

WWH:sjg *sjg*  
(6)REC 71 65-74060-4703  
EX-116  
ENCLOSURE

CONTINUED - OVER

5 MAY 13 1974

57 MAY 20 1974 *Hos*

PERS. REC. UNIT



Memorandum to Mr. W. R. Wannall  
Re: United States v. Ehrlichman, et al.,  
Case No. 74-116 -- Initial Interviews  
of Dr. Lewis J. Fielding by Bureau

[REDACTED]

By teletype dated 7/9/71, FBIHQ directed Los Angeles to ascertain full identity of Ellsberg's analyst and determine whether he possessed a Ph.D. or a Doctor of Medicine Degree since such data would bear substantially on the privileged doctor-patient relationship. Los Angeles was instructed that if analyst was determined not to be a medical doctor, Los Angeles should consider immediate interview. This teletype was prepared by James R. Wagoner, Case Agent, and was initialed by Eugene R. Harrell (retired), Donald E. Moore (retired), Charles D. Brennan, Andrew J. Decker, Sterling B. Donahoe (retired), and was approved for transmittal by William C. Sullivan (retired). Tickler copies were cut for W. Raymond Wannall and James R. Wagoner.

By teletype dated 7/12/71, Los Angeles responded with the information that Fielding was a medical doctor licensed in California. By teletype dated 7/19/71 prepared by Eugene R. Harrell, Los Angeles was instructed to immediately interview Fielding to obtain any information available regarding his knowledge of background and activities of Daniel Ellsberg, particularly intent to reproduce classified documents. This teletype was initialed by W. Raymond Wannall, Donald E. Moore, Charles D. Brennan, Sterling B. Donahoe, Dwight J. Dalbey (retired), John A. Mintz and William C. Sullivan. It was approved for transmittal by William B. Soyars (retired) for Clyde B. Tolson (retired). Tickler copies were cut for W. Raymond Wannall and James R. Wagoner.

It is noted that Fielding subsequently refused to be interviewed on advice of his attorney.



Memorandum to Mr. W. R. Wannall  
Re: United States v. Ehrlichman, et al,  
Case No. 74-116 -- Initial Interviews  
of Dr. Lewis J. Fielding by Bureau

To comply with WSPF request it will be necessary to interview present and former Bureau officials and supervisors cited above to obtain their comments regarding the circumstances surrounding the decision to interview Fielding. Mr. Tolson would be a possible exception since Mr. Soyars acted in his behalf in approving outgoing instructions for the Fielding interview and it is likely that Mr. Tolson was not knowledgeable of this event.

It is noted that in compliance with requests set forth in attached WSPF memorandum copies of the above described teletypes are being furnished to WSPF.

ACTION:

(1) That present Bureau officials and supervisors set forth above be requested to submit their personal recollection of the Fielding interview in response to the questions posed by WSPF set out above.

(2) That appropriate field offices be instructed to conduct similar interviews with retired Bureau officials and supervisors.

(3) Since Mr. Soyars acted for Mr. Tolson and there is no indication that Mr. Tolson saw the communication authorizing interview of Fielding, it is suggested that in our response to WSPF we note that there is no indication that Mr. Tolson would have knowledge of this matter and state that he will not be interviewed unless advised to the contrary by WSPF.



Airtel

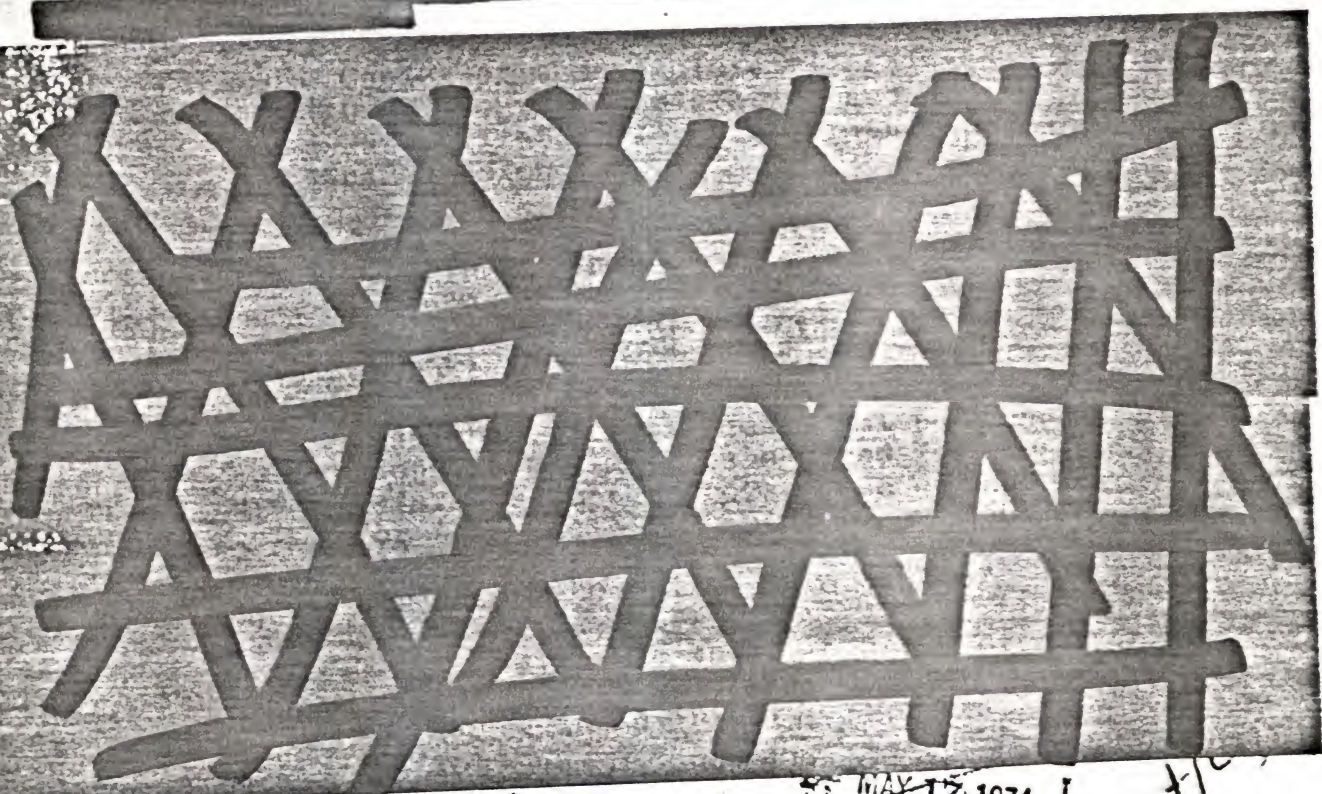
1 - Mr. R. E. Gebhardt  
1 - Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton  
5/15/74

To: SACs, Miami (65-3264)  
St. Louis (65-2765)  
WFO (65-11613)

From: Director, FBI (65-74060) - 4704

DANIEL ELLSBERG; BURGLARY OF OFFICE  
OF DR. LEWIS J. FIELDING

Watergate Special Prosecution Force (WSPF) has advised that in conducting the prosecution of the case of United States v. John D. Ehrlichman, et al, which relates to the break in of the office of Dr. Lewis J. Fielding, they desire the following information concerning three of the defendants.



Assoc. Dir.  
Dep. AD Adm.  
Dep. AD Inv.  
Asst. Dir.:

- Admin. \_\_\_\_\_
- Comp. Syst. \_\_\_\_\_
- Ext. Affairs \_\_\_\_\_
- Files & Com. \_\_\_\_\_
- Gen. Inv. \_\_\_\_\_
- Ident. \_\_\_\_\_
- Inspection \_\_\_\_\_
- Intell. \_\_\_\_\_
- Laboratory \_\_\_\_\_
- Plan. & Eval. \_\_\_\_\_
- Spec. Inv. \_\_\_\_\_
- Training \_\_\_\_\_
- Legal Coun. \_\_\_\_\_
- Telephone Rm. \_\_\_\_\_
- Director Sec'y \_\_\_\_\_

WWH:mjg  
(10)

MAY 17 1974  
SEE NOTE PAGE THREE

TP 12 2:00 PM '74

RECEIVED  
MAY 17 1974  
FBI - ST. LOUIS

FSP/SSM

ADD/FSP

53 MAY 21 1974 TELETYPE UNIT

S-Hatch



Airtel to Miami, et al  
Re: Daniel Ellsberg; Burglary of Office  
of Dr. Lewis J. Fielding  
65-74060

This matter should be handled on an expedite basis and results promptly submitted to the Bureau by cover letter-head memorandum (LHM).

NOTE:

Above investigation is being conducted in compliance with request of WSPF contained in WSPF memorandum to Director dated 5/2/74.



Airtel

1 Mr. R. E. Gebhardt  
1 Mr. W. R. Wannall  
1 - Mr. W. W. Hamilton

5/15/74

To: SACs, Alexandria (Enclosures - 4)  
Baltimore (Enclosures - 4) (65-3896)  
Boston (Enclosures - 2) (65-5236)  
Miami (Enclosures - 2) (65-3264)  
Salt Lake City (Enclosures - 2)

From: Director, FBI (65-74060)

UNITED STATES v. EHRLICHMAN, ET AL.,  
CASE NO. 74-116 -- INITIAL INTERVIEWS  
OF DR. LEWIS J. FIELDING BY BUREAU

For information of recipient offices, the Watergate Special Prosecution Force (WSPF), by memorandum dated 4/19/74, captioned as above, submitted certain requests to the Bureau in order to prepare for trial. Among these requests was the following:

"A full report on the authorization to interview Fielding, including interviews of SA Soyars, Clyde Tolson, and identification and interviews of all others who suggested, requested, approved or authorized the Fielding interview. We would like to know the reasons each individual identified thought the interview to be necessary or appropriate, whether any of the individuals discussed Dr. Fielding with anyone outside the Bureau, whether anyone outside the Bureau requested or suggested a Fielding interview and so on."

During the investigation of Daniel Ellsberg, information was developed that Ellsberg

By teletype dated 7/9/71, FBIHQ directed Los Angeles

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
Ext. Affairs \_\_\_\_\_  
Files & Com. \_\_\_\_\_  
Gen. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Inspection \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_  
Plan. & Eval. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

WWH:mjg  
(14)

EX-113  
REC-10

SEE NOTE PAGE THREE

MAY 15 1974

MAY 15 1974

RECEIVED

MAIL ROOM ☐

TELETYPE UNIT ☐



Airtel to Alexandria, et al  
Re: United States v. Ehrlichman, et al  
65-74060

to ascertain full identity of Ellsberg's analyst and determine whether he possessed a Ph.D. or a Doctor of Medicine Degree since such data would bear substantially on the privileged doctor-patient relationship. Los Angeles was instructed that if analyst was determined not to be a medical doctor, Los Angeles should consider immediate interview. This teletype was prepared by James R. Wagoner and was initialed by Eugene R. Harrell (retired), Donald E. Moore (retired), Charles D. Brennan, Andrew J. Decker, Sterling B. Donahoe (retired), and was approved for transmittal by William C. Sullivan (retired).

By teletype dated 7/12/71, Los Angeles responded with the information that Fielding was a medical doctor licensed in California. By teletype dated 7/19/71 prepared by Eugene R. Harrell, Los Angeles was instructed to immediately interview Fielding to obtain any information available regarding his knowledge of background and activities of Daniel Ellsberg, particularly intent to reproduce classified documents. This teletype was initialed by W. Raymond Wannall, Donald E. Moore, Charles D. Brennan, Sterling B. Donahoe, Dwight J. Dalbey (retired), John A. Mintz and William C. Sullivan. It was approved for transmittal by William B. Soyars (retired) for Clyde A. Tolson (retired).

In compliance with WSPF request, recipient field offices should interview the following former Bureau officials and Supervisors:

[REDACTED] - Eugene R. Harrell, [REDACTED]  
[REDACTED] Donald E. Moore, [REDACTED]

Baltimore - Dwight J. Dalbey, [REDACTED]  
[REDACTED] and Sterling B. Donahoe, [REDACTED]

Miami - William B. Soyars, [REDACTED]  
[REDACTED] Mr. Soyars is residing in the [REDACTED]  
[REDACTED] but is employed in an [REDACTED]



Airtel to Alexandria, et al  
Re: United States v. Ehrlichman, et al  
65-74060

Boston - William C. Sullivan, [REDACTED]

Salt Lake City - [REDACTED] les D. Brennan, SAC, Salt Lake City.

Enclosed for recipient offices are copies of teletypes cited above so that individuals interviewed may refresh their memories concerning the authorization to interview Dr. Fielding. Interview should be reported on FD-302s and individuals interviewed should be requested to furnish their recollections concerning the decision to interview Dr. Fielding bearing in mind that WSPF would like to know the reasons each individual involved in the authorization of the Fielding interview thought this interview would be necessary or appropriate. Comments should also include recollections or knowledge as to whether any of the individuals interviewed discussed Dr. Fielding with anyone outside of the Bureau or whether anyone outside of the Bureau requested or suggested the Fielding interview.

Interviews should be handled on an expedite basis and results promptly submitted to FBIHQ. Former Bureau officials and Supervisors being interviewed should be informed that the interviews are being conducted at the request of WSPF to aid in the preparation for captioned trial and they should be made aware of the text of the WSPF request set forth above so that they may be fully responsive to questions posed by WSPF.

NOTE:

Refer to memorandum F. S. Putman to W. R. Wannall dated 5/3/74 wherein Mr. Kelley approved interviews of present and former FBIHQ personnel relative to their knowledge of the interview of Dr. Lewis J. Fielding.



7/19/71

CODE

TELETYPE

URGENT

COMMUNICATIONS SECTION

TO: SAC, LOS ANGELES (105-27952)

FROM: DIRECTOR, FBI (65-74060)

JUL 19 1971

MC LEK (NATIONALITIES INTELLIGENCE)

TELETYPE

REURTEL JULY TEN LAST WHEREIN [REDACTED]  
[REDACTED]  
[REDACTED]

BUFILES CONTAIN NO INFORMATION OF PERTINENCE REGARDING  
FIELDING NOT ALREADY CONTAINED IN FILES OF YOUR OFFICE.

UNLESS INFORMATION EXISTS INDICATING SUCH AN INTERVIEW  
IS UNDESIRABLE, YOU SHOULD IMMEDIATELY INTERVIEW  
DR. FIELDING TO OBTAIN ANY INFORMATION HE MAY BE WILLING TO  
FURNISH REGARDING HIS KNOWLEDGE OF BACKGROUND AND  
ACTIVITIES OF DANIEL ELLSBERG. PARTICULAR EFFORTS SHOULD  
BE MADE TO ASCERTAIN KNOWLEDGE FIELDING MAY HAVE OF  
ELLBERG'S INTENT TO COPY CLASSIFIED DOCUMENTS OF THE RAND  
CORPORATION AT SANTA MONICA, CALIFORNIA, AND ANY ADDITIONAL

INFORMATION THE DOCTOR MAY HAVE WHICH WOULD SHED LIGHT

Tolson \_\_\_\_\_  
Felt \_\_\_\_\_  
Sullivan \_\_\_\_\_  
Mohr \_\_\_\_\_  
Bishop \_\_\_\_\_  
Grennan, C.D. \_\_\_\_\_  
Callahan \_\_\_\_\_  
Casper \_\_\_\_\_  
Conrad \_\_\_\_\_  
Dalbey \_\_\_\_\_  
Gale \_\_\_\_\_  
Rosen \_\_\_\_\_  
Tavel \_\_\_\_\_  
Trotter \_\_\_\_\_  
Tele. Room \_\_\_\_\_  
Holmes \_\_\_\_\_  
Gandy \_\_\_\_\_

ERH:bjp

(4)

JUL 23 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

ENCLOSURE

JUL 22 1971 PAGE TWO

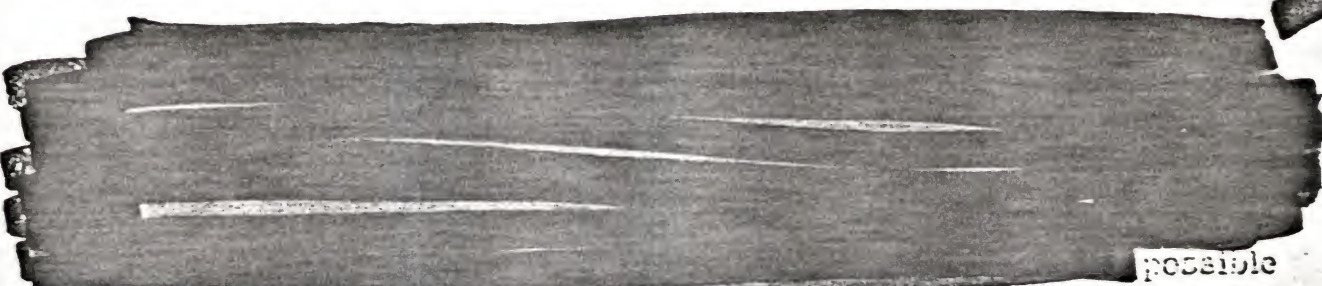
65-74060-110



TELETYPE TO : LOS ANGELES  
RE: MC LEK  
65-74060 -600

ON ELLSBERG'S VIOLATION OF FEDERAL STATUTE IN INSTANT  
MATTER. SUTEL SUMMARY OF RESULTS OF INTERVIEW, WITH  
DETAILS TO BE SUBMITTED IN REPORT FORM AND FD- THREE  
ZERO TWO WHERE APPROPRIATE.

NOTE:

  
possible  
The doctor may be cooperative and may be able to furnish information of  
value to our investigation. Fielding is subject of prior Bureau investigation  
as an applicant for part-time specialist with the U. S. Veterans Administration  
in Los Angeles. U. S. Civil Service Commission advised that he was  
cleared for such employment, however, prior to accepting the post  
he canceled his application and returned to private practice. This information  
is available in Los Angeles files. (Bufile 121-2542)



CODE

7/9/71

TELETYPE

1 - Mr. W. R. Wannall  
URGENT

TO: SAC, LOS ANGELES (105-27952)

FROM: DIRECTOR, FBI (65-74060)

1 - Mr. J. R. Wagoner  
FEDERAL BUREAU OF INVESTIGATION  
COMMUNICATIONS SECTION

MC LEK (NATIONALITIES INTELLIGENCE).

JUL 9 1971  
3:50 PM  
TELETYPE

REREP OF SA FRANCIS J. SULLIVAN, DATED JULY TWO,  
SEVENTY-ONE, CAPTIONED "DANIEL ELLSBERG, ESPIONAGE - X."

INFORMATION APPEARING ON PAGE FOUR OF REFERENCED  
REPORT REVEALS ANALYST OF DANIEL ELLSBERG WAS FULLY  
AWARE OF HIS ACTIVITY. [REDACTED]

[REDACTED] INVESTIGATION SHOULD BE CONDUCTED TO ASCERTAIN  
SPECIFICALLY IF THIS ANALYST POSSESSES A PH D. OR A DOCTOR'S  
OF MEDICINE DEGREE SINCE SUCH DATA WOULD BEAR SUBSTAN-  
TIAL ON RECOURSE BY THE ANALYST TO REFRAIN FROM  
FURNISHING INFORMATION RECEIVED FROM ELLSBERG AS  
"PRIVILEGED" BY REASON OF DOCTOR-PATIENT RELATIONSHIP. IF  
ANALYST DETERMINED TO POSSESS ONLY A PH D., CONSIDER  
IMMEDIATE INTERVIEW FOR DETAILS PERTINENT TO INSTANT  
INVESTIGATION.

JRW:bjp

(4) JUL 15 1971

SEE NOTE PAGE TWO

MAIL ROOM ☐ TELETYPE UNIT ☐

ENCLOSURE

Olson \_\_\_\_\_  
Sullivan \_\_\_\_\_  
Mohr \_\_\_\_\_  
Bishop \_\_\_\_\_  
Cannon, C.D. \_\_\_\_\_  
Callahan \_\_\_\_\_  
Casper \_\_\_\_\_  
Conrad \_\_\_\_\_  
Dalbey \_\_\_\_\_  
DeLoach \_\_\_\_\_  
Malone \_\_\_\_\_  
Rosen \_\_\_\_\_  
Savel \_\_\_\_\_  
Soyars \_\_\_\_\_  
Tavel \_\_\_\_\_  
Tele. Room \_\_\_\_\_  
Holmes \_\_\_\_\_



TELETYPE TO S ANGELES  
RE: MC LEK  
65-74060

DATA APPEARING IN REFERENCED REPORT STRONGLY  
INDICATES ELLSBERG INTENDED TO SEEK CLEARANCE FROM  
[REDACTED] OF RAND CORPORATION FOR ELLSBERG TO  
PARTICIPATE IN ANTI-VIETNAM ACTIVITY AND DETAILS SHOW  
THAT ELLSBERG CLAIMED HE HAD SO DISCUSSED SUCH ACTIVITY  
WITH [REDACTED] PRIOR TO LEAVING RAND CORPORATION [REDACTED]  
SHOULD BE IMMEDIATELY INTERVIEWED FOR DETAILS OF HIS  
KNOWLEDGE OF ELLSBERG'S INTENTIONS ALONG THESE LINES  
AND TO OBTAIN DETAILS OF CONTACT WITH HIM BY ELLSBERG  
SEEKING CLEARANCE MENTIONED.

SUTEL SUMMARY OF RESULTS OF INVESTIGATION CALLED  
FOR ABOVE, FOLLOWED BY REPORT INCORPORATING DETAILED  
INFORMATION WHERE PERTINENT ON FORM FD- THREE ZERO TWO.

NOTE:

[REDACTED] frequently  
interviews with [REDACTED] have failed to uncover information heretofore  
that Ellsberg sought Rowen's clearance as President of Rand for his anti-  
Vietnam activity. These factors should be clarified by investigation and  
interview called for herein.



UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. W. R. Wannall

FROM : F. S. Putman, Jr.

SUBJECT: UNITED STATES v. EHRLICHMAN, ET AL.,  
CASE NO. 74-116 -- INITIAL INTERVIEWS  
OF DR. LEWIS J. FIELDING BY BUREAU

1 - Mr. J. A. Mintz  
1 - Mr. W. R. Wannall  
1 - Mr. A. J. Decker  
DATE: 5/9/74  
1 - Mr. J. R. Wagoner  
1 - Mr. W. W. Hamilton

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Syst. \_\_\_\_\_  
Ext. Affairs \_\_\_\_\_  
Files & Com. \_\_\_\_\_  
Gen. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Inspection \_\_\_\_\_  
Laboratory \_\_\_\_\_  
Plan. & Eval. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director Sec'y \_\_\_\_\_

Reference is made to memorandum F. S. Putman, Jr., to Mr. W. R. Wannall dated 5/3/74, wherein Mr. Kelley approved authority for interviews of certain FBIHQ personnel relative to their knowledge of Bureau interview of Dr. Lewis J. Fielding.

Watergate Special Prosecution Force (WSPF), by memorandum dated 4/19/74, submitted certain requests to the Bureau in order to prepare for captioned trial. These requests include the following:

"A full report on the authorization to interview Fielding, including interviews of SA Soyars, Clyde Tolson, and identification and interviews of all others who suggested, requested, approved or authorized the Fielding interview. We would like to know the reasons each individual identified thought the interview to be necessary or appropriate, whether any of the individuals discussed Dr. Fielding with anyone outside the Bureau, whether anyone outside the Bureau requested or suggested a Fielding interview and so on."

Dr. Fielding was the analyst of Daniel Ellsberg and his office was burglarized on or about 9/3/71 by The White House "plumbers."

Enclosures (2)

6 MAY 14 1974

WWH:mjg  
(6)

CONTINUED - OVER

79 MAY 23 1974

5- H...  
65-74060  
PERS. REC. UNIT



Memorandum to Mr. W. R. Wannall  
Re: United States v. Ehrlichman, et al.,  
Case No. 74-116 -- Initial Interviews  
of Dr. Lewis J. Fielding by Bureau

By teletype dated 7/9/71, (Attached) FBIHQ directed Los Angeles to ascertain full identity of Ellsberg's analyst and determine whether he possessed a Ph.D. or a Doctor of Medicine Degree since such data would bear substantially on the privileged doctor-patient relationship. Los Angeles was instructed that if analyst was determined not to be a medical doctor, Los Angeles should consider immediate interview. This teletype was prepared by James R. Wagoner, Case Agent, and was initialed by Eugene R. Harrell (retired), Donald E. Moore (retired), Charles D. Brennan, Andrew J. Decker, Sterling B. Donahoe (retired), and was approved for transmittal by William C. Sullivan (retired). Tickler copies were cut for W. Raymond Wannall and James R. Wagoner.

By teletype dated 7/12/71, Los Angeles responded with the information that Fielding was a medical doctor licensed in California. By teletype dated 7/19/71 (Attached) prepared by Eugene R. Harrell, Los Angeles was instructed to immediately interview Fielding to obtain any information available regarding his knowledge of background and activities of Daniel Ellsberg, particularly intent to reproduce classified documents. This teletype was initialed by W. Raymond Wannall, Donald E. Moore, Charles D. Brennan, Sterling B. Donahoe, Dwight J. Dalbey (retired), John A. Mintz and William C. Sullivan. It was approved for transmittal by William B. Soyars (retired) for Clyde B. Tolson (retired). Tickler copies were cut for W. Raymond Wannall and James R. Wagoner.

To comply with WSPF request, recipients are requested to set forth on FD-302s their recollections concerning the decision to interview Dr. Fielding bearing in mind that WSPF would like to know the reasons each individual involved in the authorization of the Fielding interview thought this interview would be necessary or appropriate. Comments should also include recollections or knowledge as to whether any of the recipients discussed Dr. Fielding with anyone outside the Bureau or whether anyone outside the Bureau requested or suggested the Fielding interview. Attached for each recipient's information are copies of the two teletypes cited above pertaining to the authorization.



Memorandum to Mr. W.R. Wannall  
Re: United States v. Ehrlichman, et al.,  
Case No. 74-116 -- Initial Interviews  
of Dr. Lewis J. Fielding by Bureau

ACTION:

It is requested that recipients respond at their earliest convenience as WSPF desires this information to prepare for captioned trial. Responses should be directed to SA W. W. Hamilton, Room 706, 9th & D Building. It is noted interviews of retired personnel are being handled by appropriate field offices.

WWT

ago/HP

WPH/TTS

JS

JM

WPC  
EN



The Attorney General

April 16, 1974

Director, FBI

May 6 1974

DANIEL ELLSBERG; BURGLARY OF  
DR. LEWIS J. FIELDING'S OFFICE

ACTION MEMORANDUM

Reference is made to telephone conversation on April 8, 1974, between Mr. Kevin Maroney, Deputy Assistant Attorney General, and Special Agent [REDACTED] of this Bureau concerning possible testimony of FBI personnel in the perjury trial of John Ehrlichman to be held in Los Angeles County Court, Los Angeles, California.

Los Angeles County District Attorney's Office (DAO) has advised our Los Angeles Office that it desires testimony of certain Special Agents in the upcoming perjury trial of John Ehrlichman, former White House aide, scheduled to commence in Los Angeles County Court on May 20, 1974. DAO has requested that we make available the Agent who is most knowledgeable about interviews of John Ehrlichman conducted by this Bureau on April 27, 1973, and May 1, 1973. [REDACTED] presently assigned to FBI Headquarters, participated in both interviews of Ehrlichman and DAO has stated that [REDACTED] would be most appropriate to testify in this regard. DAO does not expect to question [REDACTED] on the stand unless Ehrlichman denies information appearing in FD-302s prepared after the interviews, at which time [REDACTED] would be used as a rebuttal witness. However, DAO has also advised that it believes [REDACTED] presently assigned to Washington Field Office, should also be available for testimony as they also participated in the above interviews of Ehrlichman.

65-74060

4707



The Attorney General

DAO desires that [REDACTED] both of our Los Angeles Office, be available for testimony concerning an attempt on July 20, 1971, to interview Dr. Lewis J. Fielding, psychiatrist of Daniel Ellsberg, whose office was burglarized by The White House "bumbers." In this same matter, [REDACTED] Los Angeles Office, would be asked to testify to a telephone call received from Harry Swerdlow, attorney for [REDACTED] Dr. Fielding, who telephonically advised [REDACTED] on July 27, 1971, that Dr. Fielding would decline to be interviewed by the FBI.

[REDACTED] will also be requested to testify in connection with their interview of [REDACTED] Beverly Hills, California, on April 30, 1973.

DAO has stated that none of the Agents mentioned above would be questioned beyond facts which appear in FD-302s and there would be no attempt at discovery. DAO further advised it will fight any attempt that defense counsel makes to obtain any information from files of the FBI as it believes defense has no right to this information. It is DAO's opinion that if testifying Agents refer to FD-302s to refresh their memories, defense could correctly ask to see those FD-302s but could not proceed beyond that point.

This Bureau interposes no objection to the appearance of the above-named Agents to give testimony in Los Angeles County Court as requested by the DAO. However, since [REDACTED] participated in both interviews of Ehrlichman and appears the most knowledgeable to testify in this regard, it is suggested that [REDACTED] initially be made available for travel to Los Angeles and [REDACTED] be authorized to appear only if their testimony is considered necessary by DAO as trial proceeds.

Enclosed is one Xerox copy each of FD-302s pertaining to interviews of Ehrlichman on April 27, 1973, and May 1, 1973; attempted interview of Dr. Lewis J. Fielding on July 20, 1971; telephonic interview of [REDACTED] on July 27, 1971; and interview of [REDACTED] on April 30, 1973.



The Attorney General

Pursuant to instructions of Mr. Maroney in referenced telephone conversation, two copies of this communication along with one Xerox copy each of the above-described enclosures are being furnished to the Special Prosecutor's Office.

Enclosures (5)

- 1 - The Deputy Attorney General
- 1 - Administrative Assistant to the Attorney General
- 2 - Watergate Special Prosecution Force - Enclosures (5)  
BY COURIER SERVICE



5/1/73

Date of transcription

JOHN D. HERLICHMAN, former Assistant to the President, was interviewed in the presence of his attorneys, JOHN WILSON and FRANK H. STRICKLER in their offices at 815 15th Street, N.W., Washington, D. C.

Mr. HERLICHMAN was advised that he was being contacted at the request of the Department of Justice to determine if he has any knowledge regarding the whereabouts of results of investigation conducted by the White House including reports, memoranda or other data concerning the "Pentagon Papers" case, any defendants in that case or any members of families of defendants.

Mr. HERLICHMAN furnished the following information:

There must be papers covering investigation of DANIEL ELISBERG. Mr. HERLICHMAN recalled a project to prepare a psychiatric profile on ELISBERG. It has been over a year, however, since Mr. HERLICHMAN has seen anything on the "Pentagon Papers" investigation.

As regards defendant ANTHONY RUSSO, Mr. HERLICHMAN had heard nothing of this individual until after his indictment.

Regarding members of families of defendants, Mr. HERLICHMAN recalled seeing FBI reports which had information about ELISBERG's wife.

Mr. HERLICHMAN noted he had also seen FBI reports containing information about NEIL SHEPHERD of "The New York Times."

Mr. HERLICHMAN maintained a newspaper clipping file on the "Pentagon Papers" case which he kept in a file

Interviewed on 5/1/73 at Washington, D. C. File # 65-11613  
by [redacted] and [redacted] CAR:jak Date dictated 5/1/73



cabinet. This file has since been sent to the President's files, however, and Mr. ERLICHMAN assumed the material was now in "Archives".

White House investigation concerning the "Pentagon Papers" matter was handled out of the office of EGIL KROCH and DAVID YOUNG. The results of that investigation must have been maintained there. Mr. ERLICHMAN did not know the whereabouts of what KROCH, YOUNG, HOWARD HUNT and GORDON LIDDY produced as a result of their investigation.

Mr. ERLICHMAN reiterated he has not seen any material covering White House investigation of the "Pentagon Papers" case for more than a year.

Mr. ERLICHMAN noted stories had been published in the newspaper today quoting information he furnished the FBI last Friday and he objected to this disclosure of information.

Mr. WILSON stated he wanted Mr. ERLICHMAN's objection to disclosure of information made a matter of record.



## FEDERAL BUREAU OF INVESTIGATION

4/30/73

Date of transcription

JOHN D. EHRLICHMAN, Adviser to the President, was contacted in his office at the Executive Office of the President.

It was explained to Mr. EHRLICHMAN that this interview was being conducted at the specific request of the Justice Department. He was told that information had been received alleging that on an unspecified date the offices of an unnamed psychiatrist retained by DANIEL ELLSBERG, had been burglarized apparently to secure information relating to ELLSBERG. Mr. EHRLICHMAN was advised the purpose of this interview was to learn what knowledge he might have concerning this alleged burglary.

Mr. EHRLICHMAN recalled that sometime in 1971, the President had expressed interest in the problem of unauthorized disclosures of classified government information and asked him to make inquiries independent of concurrent FBI investigation which had been made relating to the leak of the Pentagon Papers. Mr. EHRLICHMAN assumed this responsibility and was assisted in this endeavor by EGIL KROGH, a White House assistant, and DAVID YOUNG of the National Security Agency. A decision was made by them to conduct some investigation in the Pentagon Papers leak matter "directly out of the White House." G. GORDON LIDDY and E. HOWARD HUNT were "designated to conduct this investigation."

Mr. EHRLICHMAN knew that LIDDY and HUNT conducted investigation in the Washington, D. C. area and during the inquiries were going to the west coast to follow up on leads. There was information available that ELLSBERG had emotional and moral problems and LIDDY and HUNT sought to determine all facts relating to these conduct traits. HUNT endeavored to

Interviewed on 4/27/73 at Washington, D. C. File # 65-11613  
by [redacted] and [redacted]  
[redacted] EIC:jah Date dictated 4/30/73

15-92060-4707



prepare a "psychiatric profile" relating to ELLSBERG. The efforts of LIDDY and HUNT were directed toward an "in depth investigation of ELLSBERG to determine his habits, mental attitudes, motives etc."

Although Mr. EHRLICHMAN knew that LIDDY and HUNT had gone to California in connection with the above inquiries being made by them, he was not told that these two individuals had broken into the premises of the psychiatrist for ELLSBERG until after this incident had taken place. Such activity was not authorized by him, he did not know about this burglary until after it had happened, he did "not agree with this method of investigation" and when he learned about the burglary he instructed them "not to do this again."

Mr. EHRLICHMAN does not recall who specifically reported to him about the above-mentioned burglary but it was verbally mentioned to him. He does not know the name of the psychiatrist involved nor the location of this individual. He does not know whose idea it was to commit this burglary. Mr. EHRLICHMAN has no knowledge whether anything was obtained as a result of this activity.



## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/21/71

Dr. Lewis J. Fielding, M. D., 450 North Bedford, Beverly Hills, California, was interviewed and advised as follows:

Dr. Fielding was advised that the FBI is currently conducting an investigation concerning Daniel Ellsberg relating to disclosures of classified information and was asked if he could provide any information concerning these matters. Fielding advised that prior to providing any information in this regard he wished to consult with an attorney and would contact the FBI concerning his decision after such consultation.

Interviewed on 7/20/71 at Beverly Hills, California File # Los Angeles 100-37951  
by [redacted] and [redacted] GJM/bab Date dictated 7/20/71



## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/23/71

Harry Swerdlow, 9601 Wilshire Boulevard, Beverly Hills, California, telephonically furnished the following information.

He stated that his client, Dr. Lewis Fielding, had discussed with him the FBI's desire for an interview. Fielding advised Swerdlow that he did not desire to discuss any matter with the FBI and Swerdlow stated that Fielding would not even acknowledge that Daniel Ellsberg was his patient. Mr. Swerdlow stated that the above decision was that of Dr. Fielding, who indicated that in his profession as a psychiatrist, they would not divulge any information relative to one of their patients without the written permission of that patient.

Mr. Swerdlow had no further information to furnish.

Interviewed on 7/27/71 at Beverly Hills, California File # Los Angeles 157-233  
by [REDACTED] et [REDACTED] Date dictated 7/28/71



Date of transcription 5/1/73

1  
[redacted] Beverly Hills, California, was interviewed.

[redacted] provided a copy of a Beverly Hills Police Department case file number 714609 reflecting a burglary at 450 North Bedford Drive, Beverly Hills, occurring between 1630 hours, September 3, 1971 and 1600 hours, September 4, 1971. A copy of this case file as provided is attached.

[redacted] also provided a copy of a Beverly Hills Police Department Arrest and Booking Form (Booking Number 715-221) reflecting the arrest of one [redacted] on October 7, 1971 on a charge of P.C. 459 (Burglary) at 9702 Wilshire Boulevard, Beverly Hills, California. [redacted] was shown as a male, Negro, born December 9, 1927 and residing at 2322 Myrtle Avenue, Long Beach, California. A copy of this booking form is attached.

[redacted] advised that his office had located a small plastic vitamin C container with pills spilled out on the floor in the office of Dr. LEWIS J. FIELDING, at the time of their investigation of the burglary of his office. This bottle was taken to the Beverly Hills Police Department for a fingerprint examination. A latent fingerprint was lifted from the bottle and was provided to the interviewing Agents by [redacted] stated this print was not that of [redacted]

[redacted] advised that one of his officers interviewed Dr. LEWIS J. FIELDING on April 30, 1973 and had been advised by FIELDING that nothing had been taken from his office during the burglary of September 3 - 4, 1971.

FIELDING further stated that he could not recall any other burglary at his offices.

Interviewed on 4/30/73 at Los Angeles, California File # Los Angeles 100-273  
by [redacted] 42- GJM/JEB Date dictated 5/1/73



F B I

Date: 5/17/74

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code) 3

Via AIRTEL AIR MAIL  
(Priority)

TO: DIRECTOR, FBI (65-74060)  
FROM: SAC, LOS ANGELES (105-27952)(P)  
SUBJECT: DANIEL ELLSBERG;  
BURGLARY OF DR. LEWIS J.  
FIELDING'S OFFICE.

Re Bureau airtel dated 5/13/74.

On 5/16/74, Assistant District Attorney (DA), Los Angeles County, [REDACTED] was advised of the Attorney General's approval for Special Agents of Los Angeles and Washington Field Office to testify at the perjury trial of JOHN EHRLICHMAN.

[REDACTED] apologized that the Los Angeles Office had not been notified earlier that the DA's Office has planned to follow the Federal proceedings against EHRLICHMAN and decide their course of action as the Federal proceedings dictate. He said, at present, a new trial setting hearing has been set for June 17, 1974, at which time he will be in a better position to advise the future course of the local proceedings and whether Los Angeles County will proceed with its prosecution. He also said his office will not need to consult with the Special Agents of Washington Field and Los Angeles until after the trial date is set and when his office has decided on a course of prosecutive action.

The Bureau and Washington Field will be kept advised of developments.

- 2 - Bureau (RM)
- 1 - Washington Field (RM)
- 2 - Los Angeles

GSB/dlm  
(5)

REC-67

EX-105

MAY 23 1974

W. W. [Signature]  
FIVE

84 JUN 12 1974 Approved: \_\_\_\_\_  
Special Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

U.S. Government Printing Office: 1972 - 455-574



Airtel

1 - Mr. R.E. Gebhardt  
1 - Mr. W.R. Wannall  
1 - Mr. W.W. Hamilton

To: SACs, Los Angeles (105-27952) (Enclosure)  
WFO (65-11613) (Enclosure)

5/13/74

From: Director, FBI (65-74060) - 4707

EX-115  
DANIEL ELLSBERG; BURGLARY OF  
DR. LEWIS J. FIELDING'S OFFICE

ReLAtels 3/29, 4/3 and 4/5/74.

Enclosed for recipient offices is one copy each of memorandum from the Attorney General (AG) dated 5/6/74, pertaining to possible testimony by Bureau Agents in the perjury trial of John Ehrlichman to be held in Los Angeles County, Los Angeles, California.

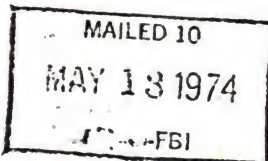
Agents named in the enclosure should be made aware of the AG's instructions. Los Angeles should keep FBIHQ apprised of developments in this matter and give FBIHQ as much advance notice as possible if these Special Agents are required to give testimony.

WWH:mjg  
(8)

NOTE:

Reference is made to memorandum F. S. Putman, Jr., to W. R. Wannall dated 4/1/74 wherein Mr. Kelley granted authority that certain SAs from Los Angeles and WFO be allowed to testify, if called, in Los Angeles County Court. For information, it is noted that trial at Los Angeles has been delayed pending outcome of Federal trial of Ehrlichman.

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Admin. \_\_\_\_\_  
Comp. Sys. \_\_\_\_\_  
Ext. Affs. \_\_\_\_\_  
Files & Com. \_\_\_\_\_  
Gen. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Inspection \_\_\_\_\_  
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Laboratory \_\_\_\_\_  
Plan. & Eval. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Training \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_



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